

REDEVELOPMENT AGENCY STAFF REPORT

MEETING DATE: July 28, 2004

PRELIMINARY JUNE 2004 FINANCE & INVESTMENT REPORT

Agenda Item # 1
Prepared By:
Finance Director
Submitted By:
Executive director

RECOMMENDED ACTION:

Accept and File Report

EXECUTIVE SUMMARY: Attached is the monthly *Preliminary* Finance and Investment Report of the Redevelopment Agency of the City of Morgan Hill for the month of June 2004. The report covers activity for the twelve months of the 2003/2004 fiscal year on a preliminary basis. A summary of the report is included on the first page for the Board's benefit.

The Redevelopment Agency monthly Finance and Investment Report is presented to the Agency Board and our Citizens as part of our ongoing commitment to improve and maintain public trust through communication of our finances, budget and investments. The report also serves to provide the information necessary to determine the adequacy/stability of financial projections and develop equitable resource/revenue allocation procedures.

This report covers all fiscal activity of the Redevelopment Agency.

FISCAL IMPACT: As presented.

REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL

Monthly Financial and Investment Reports

Preliminary June 30, 2004 - 100% Year Complete



Prepared by:

FINANCE DEPARTMENT



REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL, CALIFORNIA

PRELIMINARY FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2003/04 FOR THE MONTH OF JUNE 2004 - 100% OF YEAR COMPLETE

Revenues

Through June 30, the Redevelopment Agency preliminarily received \$17,946,380 in property tax increment revenues. Most property tax increment revenues are received between December and April. This amount is net of an Agency payment in May to Santa Clara County for \$1,015,955, as required by the State of California in connection with an Educational Revenue Augmentation Fund shift needed to balance the State budget. The Redevelopment Agency, as of June 30, 2004, has collected \$100,000,000 in tax increment revenue under the original plan and has preliminarily collected \$78,368,988, net of pass-through obligations to other agencies, toward the plan amendment cap of \$147,000,000. Since the \$100 million tax increment cap for the original plan was reached during 1999/2000, all tax increment revenues collected during 2003/2004 were collected under the plan amendment.

An amount of \$789,071 from interest earnings and rental income has been preliminarily received through June 30, 2004. The interest earnings included a \$422,000 interest payment on the previous loan to South County Housing for the Murphy Ranch project. Additional interest earnings earned for the months of April, May, and June have not been included and will be posted following the end of the fourth quarter ended June once all activity is known.

Other revenues preliminarily totaling \$2,354,975 included a transfer in of \$562,500 previously collected from Morgan Hill Development Partners for the aquatics center, \$669,000 from a principal repayment on the previous loan to South County Housing for the Murphy Ranch project, and \$821,782 in Redevelopment monies transferred back from the Public Facility AB1600 fund for the Library project.

Expenditures

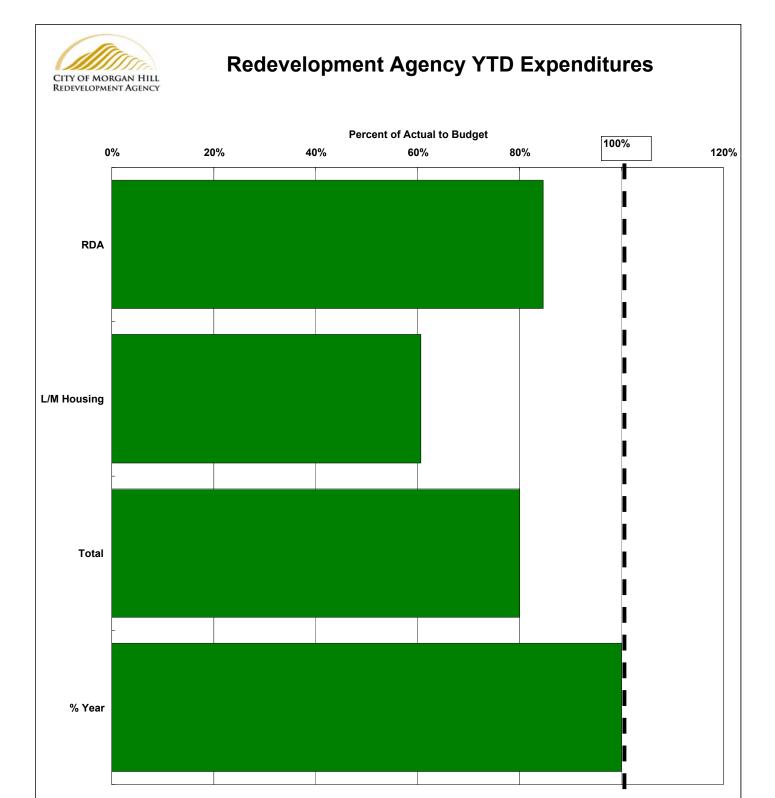
Total Redevelopment Agency Capital Projects expenditures and encumbrances preliminarily equaled \$34,835,643, which were 85% of budget. Of this total, \$5,062,493 represented encumbrances for capital projects and other commitments. If the encumbrances were excluded, the RDA would have preliminarily spent only 72% of the budget. Expenditures for administrative costs for employee services, supplies, and contract services were preliminarily 94% of budget. During July, the Agency made a \$2.55 million installment payment towards the purchase of the Sports Complex property. During July, the Agency also spent approximately \$3.5 million for the purchase of the Courthouse Facility property and, in March, spent another \$875,000 toward construction of the Courthouse Project. In April, the Agency made the final installment payment of \$3,250,000 on the Gunderson property. To date, the Agency has incurred \$4.6 million in acquisition and construction costs related to the Butterfield Blvd. Phase IV Project, has incurred \$9.5 million in costs associated with the construction of the Aquatics Complex, and has incurred \$800,000 in street resurfacing costs. In addition, the Agency purchased land behind City hall from the City at a cost of \$1.7 million in March. Capital Projects 2003/04 expenditures used monies collected under the plan amendment.

Budgeted expenditures plus encumbrances for Housing were preliminarily at 61% of the budget for a total of \$5,879,352. During July, the Agency paid approximately \$3 million for the purchase of the Royal Court Apartments. Although certain loans and grants for various housing loan and grant programs have been committed, the related funds have not been drawn down by the recipients and, hence, are not reflected in the expenditures. All of the 2003/04 housing related expenditures has been funded with tax increment collected under the plan amendment.

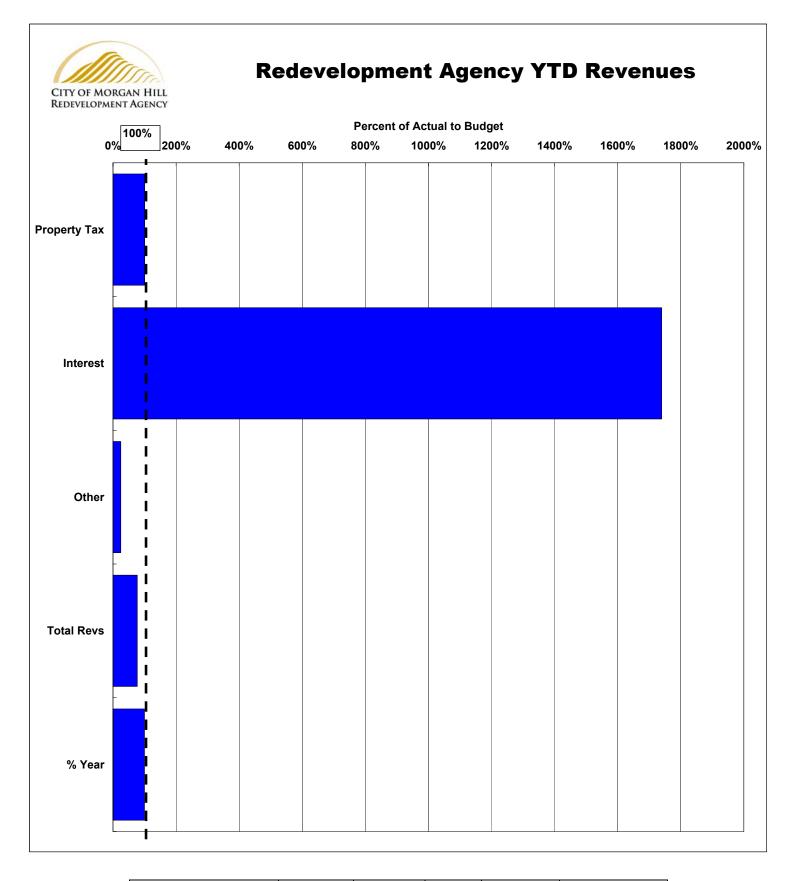
Fund Balance

The preliminary unreserved fund balance of negative (\$807,494) for the Capital Projects Fund at June 30, 2004, reflected the large amount of current contract encumbrances, not yet expended, and consisted entirely of monies collected under the plan amendment. The unreserved fund balance included future obligations to pay an additional \$2.7 million for the Courthouse Facility and \$1.61 million for the Lomanto property should the Agency agree to execute its option to purchase in accordance with the agreement. If both of these future commitments were subtracted from the negative (\$807,494), the remaining preliminary unreserved fund balance at June 30 would be a negative (\$5,117,494). However, these commitments are expected to be paid out over the next 2 to 3 years. Staff will bring a short-term borrowing plan to the Board in the near future to finance cash flow needs. The Capital Projects Fund preliminary cash balance at June 30 was \$5,952,073.

The preliminary unreserved fund balance of \$6,146,132 for the Housing Fund at June 30 consisted of funds all collected under the plan amendment.



Expenditure Category	Budget	Actual Plus Encumbrances	% of Budget
CAPITAL PROJECTS	\$41,163,703	\$34,835,643	85%
HOUSING	9,688,767	5,879,352	61%
TOTALS	\$50,852,470	\$40,714,995	80%



			% OF	PRIOR YEAR	% CHANGE FROM
REVENUE CATEGORY	BUDGET	ACTUAL	BUDGET	TO DATE	PRIOR YEAR
PROPERTY TAXES	\$17,877,658	\$17,946,380	100%	\$18,865,627	-5%
INTEREST INCOME/RENTS	\$45,364	\$789,071	1739%	\$620,458	27%
OTHER REVENUE	\$9,450,090	\$2,354,975	25%	\$208,817	1028%
TOTALS	\$27,373,112	\$21,090,426	77%	\$19,694,902	7%



Redevelopment Agency
Fund Balance Report - Fiscal Year 2003/04
Preliminary For the Month of June 2004
100% of Year Complete

			Revenue	s	Expenditu	res	Year to-Date	Ending Fu	nd Balance	Cash and In	vestments
Fund		Fund Balance	YTD	% of	YTD	% of	Deficit or				
No.	Fund	06-30-03	Actual	Budget	Actual	Budget	Carryover	Reserved ¹	Unreserved	Unrestricted	Restricted
047	CARITAL PROJECTS	£00,000,540	45 400 000	000/	00 770 450	700/	(4.4.0.47.4.47)	7 000 005	(007.404)	5.050.070	
	CAPITAL PROJECTS	\$20,860,548	15,426,033	66%	29,773,150	72%	(14,347,117)	7,320,925	(807,494)		
327/328	HOUSING	\$24,240,428	5,664,393	148%	5,841,615	60%	(177,222)	17,917,073	\$6,146,132	6,214,144	
TOTAL C	APITAL PROJECT FUNDS	<u>\$45,100,976</u>	21,090,426	<u>77%</u>	35,614,76 <u>5</u>	<u>70%</u>	(14,524,339)	25,237,998	5,338,638	12,166,217	
SUMMAR	Y BY FUND TYPE										
	CAPITAL PROJECTS GROUP	\$45,100,976	21,090,426	77%	35,614,765	70%	(14,524,339)	25,237,998	5,338,638	12,166,217	
						•	•				
	TOTAL ALL GROUPS	\$45,100,976	21,090,426	77%	35,614,765	70%	(14,524,339)	25,237,998	5,338,638	12,166,217	
	TOTAL CASH AND INVESTMENTS									12,166,217	

¹ Amount reserved for encumbrances, fixed asset replacement, long-term receivables



Redevelopment Agency Year to Date Revenues - Fiscal Year 2003/04 Preliminary For the Month of June 2004 100% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGETED	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCREASE (DECREASE) FROM PRIOR YTD	% CHANGE
CAPITAL PROJECTS FUNDS							
317 CAPITAL PROJECTS							
Property Taxes & Supplemental Roll Development Agreements	14,086,573	14,086,573	13,595,735	97% n/a	14,669,674	(1,073,939)	-7% n/a
Interest Income, Rents Other Agencies/Current Charges	9,450,000	9,450,000	236,061 1,594,237	n/a <u>17%</u>	274,569 117,542	(38,508) 1,476,695	-14% <u>1256%</u>
TOTAL CAPITAL PROJECTS	23,536,573	23,536,573	15,426,033	<u>66%</u>	15,061,785	364,248	<u>2%</u>
327/328 HOUSING							
Property Taxes & Supplemental Roll Interest Income, Rent Other	3,791,085 45,364 90	3,791,085 45,364 <u>90</u>	4,350,645 553,010 760,738	115% 1219% <u>845264%</u>	4,195,953 345,889 91,275	154,692 207,121 669,463	4% 60% <u>733%</u>
TOTAL HOUSING	3,836,539	3,836,539	5,664,393	<u>148%</u>	4,633,117	1,031,276	<u>22%</u>
TOTAL CAPITAL PROJECTS FUNDS	27,373,112	27,373,112	21,090,426	77%	19,694,902	1,395,524	7%



Redevelopment Agency Year to Date Expenditures - Fiscal Year 2003/04 Preliminary For the Month of June 2004 100% of Year Complete

FUND NO.	FUND/ACTIVITY	THIS MONTH ACTUAL EXPENDITURES	ADOPTED BUDGET	AMENDED BUDGET	YTD EXPENDITURES	OUTSTANDING ENCUMBRANCES	TOTAL ALLOCATED	% OF TOTAL TO BUDGET
317 CA	PITAL PROJECTS							
	BAHS Administration BAHS Economic Developme BAHS CIP	95,162 63,482 1,866,930	1,509,317 4,516,120 21,320,714	1,598,923 8,229,928 31,334,852	1,447,872 4,782,778 23,542,500	61,070 1,253,870 3,747,553	1,508,942 6,036,648 27,290,053	94% 73% <u>87%</u>
тот	AL CAPITAL PROJECTS	2,025,574	27,346,151	41,163,703	29,773,150	5,062,493	34,835,643	<u>85%</u>
327 ANI	D 328 HOUSING							
	Housing	551,847	4,592,332	9,688,767	5,841,615	37,737	5,879,352	<u>61%</u>
TO	TAL HOUSING	551,847	4,592,332	9,688,767	5,841,615	37,737	5,879,352	<u>61%</u>
TOTAL	CAPITAL PROJECT FUND	2,577,421	31,938,483	50,852,470	35,614,765	5,100,230	40,714,995	80%

Redevelopment Agency of the City of Morgan Hill Balance Sheet Report - Fiscal Year 2003/04 Preliminary For the Month of June 2004 100% of Year Complete

	CAPITAL PROJECTS (Fund 317)	Housing (Fund 327/328)
ASSETS	· ·	, ,
Cook and investments.		
Cash and investments: Unrestricted	5,927,073	6,464,144
Accounts Receivable	5,674	7,806
Loans and Notes Receivable ¹	3,331,217	24,165,590
Louis and Notos Roosivasio	3,331,217	24,100,000
Advance to Other Funds		
Fixed Assets ²	71,049	
Other Assets		
Total Assets	9,335,013	30,637,540
LIABILITIES		
Accounts Payable and Accrued Liabilities	1,677,748	38,079
Deferred Revenue ³	1,143,834	6,286,255
Accrued Vacation and Comp Time		
Total Pakippe	0.004.500	2 22 4 22 4
Total liabilities	2,821,582	6,324,334
FUND BALANCE		
Fund Balance		
Reserved for:		
Reserved for.		
Encumbrances	5,062,493	37,737
Advance to Other Funds	, ,	•
Properties Held for Resale	71,049	
Loans and Notes Receivable	2,187,383	17,879,336
Total Reserved Fund balance	7,320,925	17,917,073
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Unreserved Fund Balance	(807,494)	6,396,133
Total Fund Balance	6,513,431	24,313,206
Total Liabilities and Fund Balance	9,335,013	30 627 540
TOTAL FIADILLIES AND FUND DAIGNOE	5,335,013	30,637,540

¹ Includes Housing Rehab loans and loans for several housing and Agency projects.

² Includes RDA properties held for resale.

³ Includes the deferred payment portion of the loans noted above.



REDEVELOPMENT AGENCY MEETING DATE: July 28, 2004

Expand Eligible Uses for the Small Business Fee Deferral Program

RECOMMENDED ACTION(S):

Expand the eligible uses for the Small Business Fee Deferral Program to include the in-lieu water fee.

EXECUTIVE SUMMARY:

The Small Business Fee Deferral Program was initiated in January, 1999, to foster commercial and industrial development by helping to minimize the potential burden of three City fees (i.e. sewer, traffic and in-lieu utility undergrounding fees) on new construction, relocation and/or expansion of small business projects. Staff is now requesting that the authorizing language be broadened to allow the program to include the water in-lieu fee. One business is currently requesting to use this program for this use.

The in-lieu water fee is a development fee charged to business projects that are located where the City plans to replace or increase water systems. The fee is a per-foot charge based upon the frontage of the property affected by the proposed water system improvement. Since it makes no sense to replace or enlarge small pieces of piping systems, the City collects the fee then, replaces whole segments of the water system when appropriate.

The Small Business Fee Deferral Program is currently the only fee payment program where the Redevelopment Agency is the lender. It provides a maximum of 90% of the fee cost or \$10,000, whichever is less, as a short-term loan at no interest. Payments are deferred for six-months, then amortized over the next 12-months. The program transfers monies immediately into the affected City fund. The other fee loan programs are City programs which allow the affected fees to be amortized over time instead of being paid in a lump sum at the beginning of construction.

Expanding the Program to include this additional fee will further assist small businesses to come and grow in Morgan Hill by reducing the up-front costs associated with starting, relocating or physically expanding a business. The inclusion of the in-lieu water fee is the only change being proposed at this time.

FISCAL IMPACT:

None, as funds are currently budgeted for the program.

Agenda Item #2
Prepared By:

BAHS Analyst
Approved By:

BAHS Director
Submitted By:

Executive Director



CITY COUNCIL STAFF REPORT MEETING DATE: July 28, 2004

JUNE 2004 PRELIMINARY FINANCE & INVESTMENT REPORT

Agenda Item # 3
Prepared By:
Finance Director
Submitted By:
City Manager

RECOMMENDED ACTION:

Accept and File Report

EXECUTIVE SUMMARY:

Attached is the monthly *Preliminary* Finance and Investment Report for the period ended June 30, 2004. The report preliminarily covers the twelve months of activity for the 2003/2004 fiscal year. A summary of the report is included on the first page for the City Council's benefit.

The monthly Finance and Investment Report is presented to the City Council and our Citizens as part of our ongoing commitment to improve and maintain public trust through communication of our finances, budget and investments. The report also serves to provide the information necessary to determine the adequacy/stability of financial projections and develop equitable resource/revenue allocation procedures.

This report covers all fiscal activity in the City, including the Redevelopment Agency. The Redevelopment Agency receives a separate report for the fiscal activity of the Agency at the meeting of the Agency. Presenting this report is consistent with the goal of *Maintaining and Enhancing the Financial Viability of the City*.

FISCAL IMPACT: as presented

CITY OF MORGAN HILL Monthly Financial and Investment Reports

Preliminary June 30, 2004 –100% Year Complete



Prepared by:

FINANCE DEPARTMENT



PRELIMINARY FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2003/04 FOR THE MONTH OF JUNE 2004 - 100% OF YEAR COMPLETE

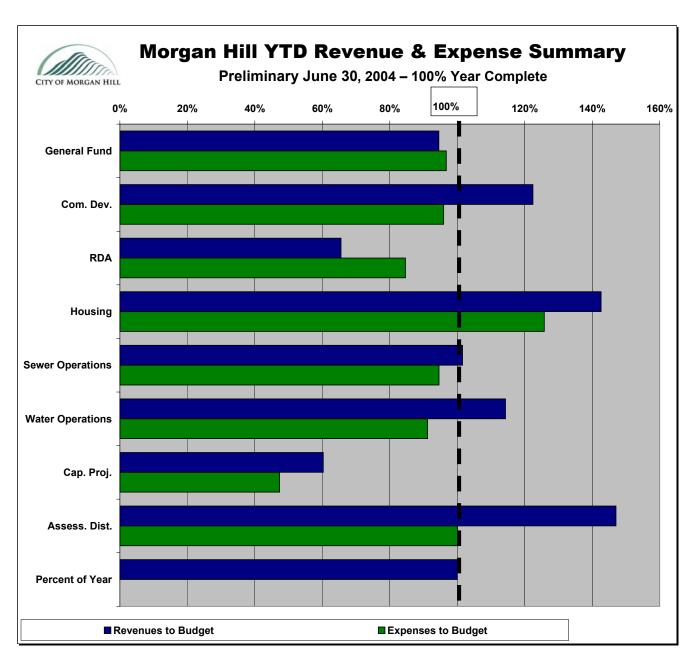
This analysis of the status of the City's financial situation reflects 100% of the year.

- * General Fund The revenues received in the General Fund were preliminarily 94% of the budgeted revenues. Property related taxes received by the City preliminarily amounted to 119% of the budget. The amount of Sales Tax collected was preliminarily 89% of the sales tax revenue budget, or 11% less than the amount collected for the same period last year. Franchise fees were preliminarily 87% of budget and it is expected that 100% of the budget will be received by July 31. Business license and other permit collections were preliminarily 97% of the budgeted amount, or 2% more than the amount received during the same period last year. Motor Vehicle-in-Lieu revenues were preliminarily only \$1,566,611, or 75% of the budgeted amount, which was 23% less than the amount received at this time last year. This drop in Motor Vehicle-in-Lieu fees was caused by the State's elimination of the "State backfill" for these fees for at least a three month period, resulting in much lower fees received by the City. As of this date, the State's fiscal crisis continues to make this process complicated and problematic. Interest & Other Revenue were preliminarily 95% of budget and reflect interest earnings only through March, since earnings for the months of April, May, and June will be posted following the end of the fourth quarter ended June once all activity is known.
- * The General Fund expenditures and encumbrances to date totaled 97% of the budgeted appropriations.
- * Transient Occupancy (Hotel) Tax The TOT rate is 10%. The City receives transient occupancy taxes on a quarterly basis. Taxes for the first three quarters of the current year amounted to \$679,429, or 76% of budget, which was 1% more than the amount received in the prior year by this point. Taxes for the fourth quarter ended June 30 will be received by the City by July 31 after the end of the quarter.
- * Community Development Revenues were preliminarily 122% of budget, which was 9% more than the amount collected in the like period for the prior year. Planning expenditures plus encumbrances were preliminarily 112% of budget; Building has preliminarily expended or encumbered 84% of budget and Engineering 89%. Community Development preliminarily has expended or encumbered a combined total of 96% of the 2003/04 budget, including \$246,224 in encumbrances. If encumbrances were excluded, Community Development would have preliminarily spent only 89% of the combined budget.
- * RDA and Housing Property tax increment revenues preliminarily amounting to \$17,946,380 have been received as of June 30, 2004. Expenditures plus encumbrances totaled 81% of budget. If encumbrances totaling \$5,100,230 were excluded, the RDA would have preliminarily spent only 69% of the combined budget. In July, the RDA spent \$3.4 million toward the Courthouse Project acquisition and, in March, spent another \$875,000 toward construction of the Courthouse Project. In August, the Agency made a \$2.55 million installment payment toward the purchase of the Sports Fields Complex property. In April, the Agency made the final installment payment of \$3,250,000 on the Gunderson property. In July, the Agency made a \$3 million loan to South County Housing for the Royal Court Housing. Through June 30, 2004, \$9.5 million in costs had preliminarily been incurred for the construction of the Aquatics Center Project.



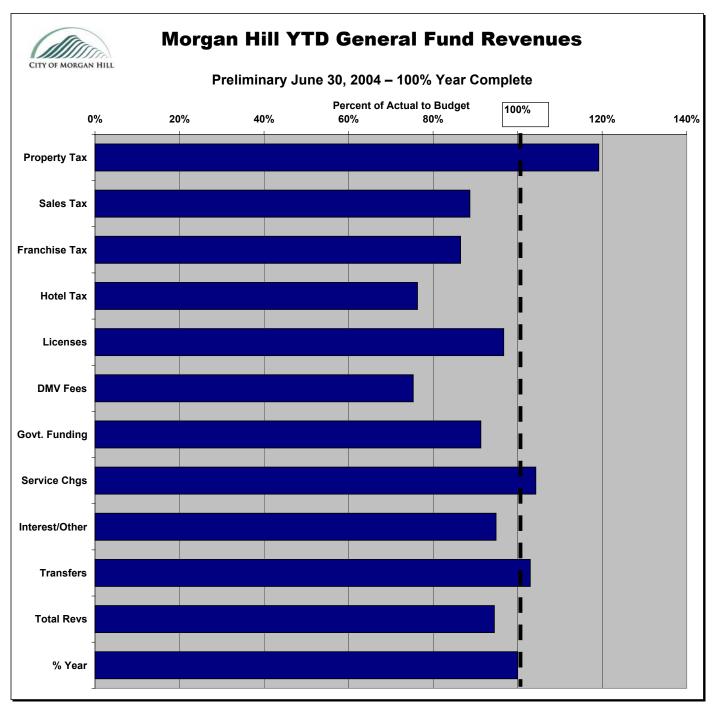
CITY OF MORGAN HILL, CALIFORNIA PRELIMINARY FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2003/04 FOR THE MONTH OF JUNE 2004 - 100% OF YEAR COMPLETE

- * Water and Sewer Operations- Water Operations revenues, including service fees, were preliminarily 114% of budget. Expenditures preliminarily totaled 91% of appropriations. Sewer Operations revenues, including service fees, were preliminarily 102% of budget. Expenditures for sewer operations were preliminarily 95% of budget.
- * Investments maturing/called/sold during this period. During the month of June, \$4 million was invested in new Federal Agency investments. Further details of all City investments are contained on pages 6-8 of this report.



	REVENU	IES	EXPENS	6/30/2004	
		% OF	ACTUAL plus	% OF	UNRESTRICTED
FUND NAME	ACTUAL	BUDGET	ENCUMBRANCES	BUDGET	FUND BALANCE
General Fund	\$15,193,475	95%	\$16,235,243	97%	\$10,094,737
Community Development	2,818,014	122%	3,193,219	96%	1,176,525
RDA	15,426,033	66%	34,835,643	85%	(807,494)
Housing/CDBG	5,695,352	143%	6,167,133	126%	6,124,809
Sewer Operations	5,572,979	102%	7,105,845	95%	3,502,208
Sewer Other	2,978,625	240%	1,688,010	32%	12,639,050
Water Operations	8,084,645	114%	7,266,518	91%	3,397,510
Water Other	1,780,338	164%	3,736,692	51%	2,653,672
Other Special Revenues ¹	1,780,639	166%	1,704,454	60%	3,119,165
Capital Projects & Streets Funds	8,168,362	60%	10,870,439	47%	22,106,864
Debt Service Funds	231,799	147%	236,533	100%	503,645
Internal Service	4,036,861	98%	3,831,128	95%	4,804,437
Agency	3,259,797	122%	4,599,248	177%	3,861,267
TOTAL FOR ALL FUNDS	\$75,026,919	91%	\$101,470,105	77%	\$73,176,395

¹ Includes all Special Revenue Funds except Community Development, CDBG, and Street Funds

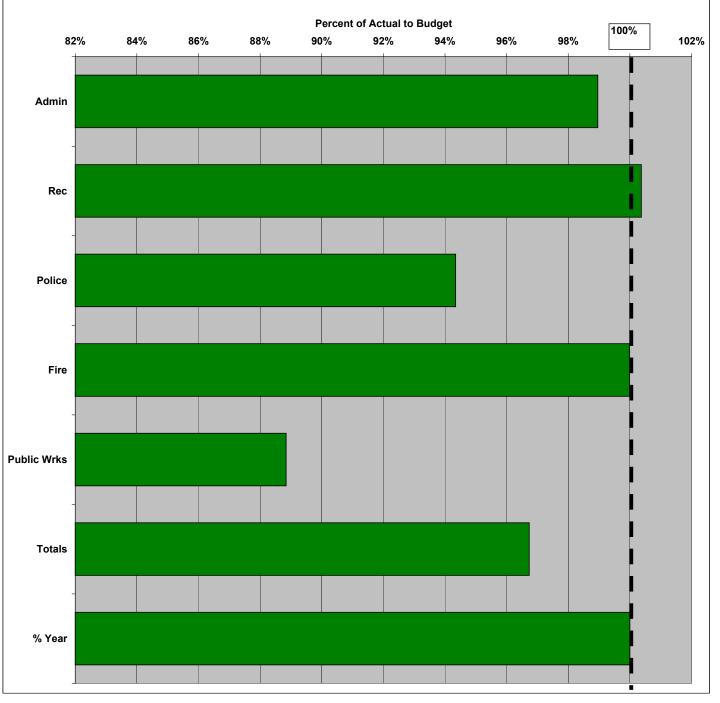


			% OF	PRIOR YEAR	% CHANGE FROM
REVENUE CATEGORY	BUDGET	ACTUAL	BUDGET	TO DATE	PRIOR YEAR
PROPERTY RELATED TAXES	\$2,440,000	\$2,908,828	119%	\$2,547,827	14%
SALES TAXES	\$4,923,000	\$4,366,110	89%	\$4,906,693	-11%
FRANCHISE FEE	\$961,180	\$831,596	87%	\$829,878	
HOTEL TAX	\$890,000	\$679,429	76%	\$670,866	1%
LICENSES/PERMITS	\$202,600	\$195,869	97%	\$191,737	2%
MOTOR VEHICLE IN LIEU	\$2,080,000	\$1,566,611	75%	\$2,035,157	-23%
FUNDING - OTHER GOVERNMENTS	\$271,900	\$248,139	91%	\$123,512	101%
CHARGES CURRENT SERVICES	\$2,588,137	\$2,700,376	104%	\$2,235,528	21%
INTEREST & OTHER REVENUE	\$893,050	\$847,459	95%	\$629,530	35%
TRANSFERS IN	\$823,986	\$849,058	103%	\$925,332	-8%
	•	•			
TOTALS	\$16,073,853	\$15,193,475	95%	\$15,096,060	1%



Morgan Hill YTD General Fund Expenditures

Preliminary June 30, 2004 – 100% Year Complete



Expenditure Category	Budget	Actual Plus cumbrances	% of Budget
			,, <u></u>
ADMINISTRATION	3,279,302	3,216,762	99%
RECREATION	2,012,348	2,019,812	100%
POLICE	6,812,300	6,427,122	94%
FIRE	3,745,220	3,744,977	100%
PUBLIC WORKS	822,840	731,050	89%
TOTALS	\$ 16,783,364	\$ 16,235,243	97%



City of Morgan Hill Fund Activity Summary - Fiscal Year 2003/04 Preliminary For the Month of June 2004 100% of Year Completed

			Revenues		Expenses		Year to-Date	Ending Fun	d Balance	Cash and In	vestments
Fund		Fund Balance	YTD	% of	YTD	% of	Deficit or				
No.	Fund	06-30-03	Actual	Budget	Actual	Budget	Carryover	Reserved ¹	Unreserved	Unrestricted	Restricted ²
010	GENERAL FUND	\$11,136,505	\$15,193,475	95%	\$15,870,859	95%	(\$677,384)	\$364,384	\$10,094,737	\$11,525,267	\$4,400
TOTAL G	ENERAL FUND	<u>\$11,136,505</u>	<u>\$15,193,475</u>	<u>95%</u>	<u>\$15,870,859</u>	<u>95%</u>	(\$677,384)	<u>\$364,384</u>	\$10,094,737	<u>\$11,525,267</u>	<u>\$4,400</u>
202	STREET MAINTENANCE	\$1,683,131	\$2,027,835	146%	\$2,175,705	72%	(\$147,870)	\$369,797	\$1,165,464	\$1,174,531	
204/205	PUBLIC SAFETY/SUPPL. LAW	\$485,350	\$107.119	97%	\$273,582	100%	(\$166,463)	,	\$318,887	\$318,888	
206	COMMUNITY DEVELOPMENT	\$1,551,730	\$2,818,014	122%	\$2,946,995	89%	(\$128,981)	\$246,224	\$1,176,525	\$1,498,479	
207	GENERAL PLAN UPDATE	\$190,845	\$102,821	135%	\$62,904	32%	\$39,917	\$87,837	\$142,925	\$230,850	
210	COMMUNITY CENTER	\$360,157	\$3,892	63%	\$312,000	100%	(\$308,108)	701,001	\$52,049	\$52,050	
215 / 216		\$636,136	\$30,959	20%	\$181,091	39%	(\$150,132)	507,328	(\$21,324)	\$94,778	
220	MUSEUM RENTAL	\$1,274	\$8	20%	\$2,242	93%	(\$2,234)	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	(\$960)	(\$932)	
225	ASSET SEIZURE	\$38,096	\$617	106%	, ,	n/a	\$617		\$38,713	\$38,713	
229	LIGHTING AND LANDSCAPE	\$33,766	\$134,435	105%	\$156,027	93%	(\$21,592)	\$9,722	\$2,452	\$18,842	
232	ENVIRONMENT PROGRAMS	\$613,697	\$354,523	92%	\$391,812	78%	(\$37,289)	\$25,233	\$551,175	\$542,331	
234	MOBILE HOME PK RENT STAB.	\$9,808	\$304,722	99%	\$116,190	34%	\$188,532	\$225,016	(\$26,676)	\$207,568	
235	SENIOR HOUSING	\$255,610	\$4,106	60%	\$6,450	45%	(\$2,344)	, ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	\$253,266	\$253,267	
236	HOUSING MITIGATION	\$1,043,306	\$106,951	385%	13,340	1%	\$93,611	1,660	\$1,135,257	\$1,136,917	
240	EMPLOYEE ASSISTANCE	\$8,921	\$91,445	454%	18,289	91%	\$73,156	,	\$82,077	\$79,467	
247	ENVIRONMENT REMEDIATION	· /	570,000	n/a	,		\$570,000		\$570,000	\$570,000	
TOTAL S	PECIAL REVENUE FUNDS	\$6,911,827	\$6,657,447	<u>135%</u>	\$6,656,627	<u>69%</u>	<u>\$820</u>	<u>\$1,472,817</u>	<u>\$5,439,830</u>	<u>\$6,215,749</u>	
		_									
301	PARK DEV. IMPACT FUND	\$3,191,630	\$971,476	223%	\$383,490	18%	\$587,986	\$95,305	\$3,684,311		\$3,783,015
302	PARK MAINTENANCE	\$2,909,243	\$319,002	124%	\$200,000	100%	\$119,002		\$3,028,245	\$3,028,245	
303	LOCAL DRAINAGE	\$2,910,954	\$206,989	71%	\$109,100	5%	\$97,889		\$3,008,843		\$3,008,843
304	LOCAL DRAINAGE/NON-AB1600	\$3,276,514	\$135,702	86%	\$149,273	68%	(\$13,571)	\$46,849	\$3,216,094	\$3,142,944	
305	OFF-STREET PARKING	\$4,020	\$65	68%	4,058	102%	(\$3,993)		\$27	\$27	
306	OPEN SPACE	\$458,488	\$236,532	412%			\$236,532	\$10,000	\$685,020	\$695,020	
309	TRAFFIC IMPACT FUND	\$2,826,115	\$1,456,787	220%	\$978,125	48%	\$478,662	\$643,238	\$2,661,539		\$3,289,845
311	POLICE IMPACT FUND	\$1,183,045	\$118,085	229%	\$25,579	2%	\$92,506	\$10,000	\$1,265,551		\$1,275,552
313	FIRE IMPACT FUND	\$2,603,859	\$235,652	159%	\$520,249	94%	(\$284,597)	\$9,101	\$2,310,161		\$2,319,262
317	REDEVELOPMENT AGENCY	\$20,860,548	\$15,426,033	66%	\$29,773,150	72%	(\$14,347,117)	7,320,925	(\$807,494)	\$5,952,073	
	HOUSING	\$24,240,428	\$5,664,393	148%	\$5,841,615	60%	(\$177,222)	17,917,073	\$6,146,133	\$6,214,144	
340	MORGAN HILL BUS.RANCH I	\$48,290	\$781	68%			\$781		\$49,071	\$49,071	
342	MORGAN HILL BUS.RANCH II	\$54,233	877	n/a			\$877		\$55,110	\$55,109	
346	PUBLIC FACILITIES NON-AB1600	\$1,332,714	\$1,762,576	18%	2,996,186		(\$1,233,610)	\$929,767	(\$830,663)	\$219,582	
347	PUBLIC FACILITIES IMPACT FUND	\$665,032	\$505,678	324%	\$969,401	101%	(\$463,723)	9,750	\$191,559		\$164,640
348	LIBRARY IMPACT FUND	\$414,456	\$73,725	240%	\$225	100%	\$73,500		\$487,956		\$487,956
350	UNDERGROUNDING	\$1,257,217	97,778	310%	\$178,780	41%	(\$81,002)	66,461	\$1,109,754	\$1,176,432	
360	COMM/REC CTR IMPACT FUND		18,822	310%		41%	\$18,822		\$18,822	\$18,821	
TOTAL C	APITAL PROJECT FUNDS	<u>\$68,236,786</u>	<u>\$27,230,953</u>	<u>69%</u>	<u>\$42,129,231</u>	<u>59%</u>	<u>(\$14,898,278)</u>	<u>\$27,058,469</u>	<u>\$26,280,039</u>	<u>\$20,551,468</u>	<u>\$14,329,113</u>
527	HIDDEN CREEK		1	n/a			T		1		
533	DUNNE/CONDIT			n/a							
536	ENCINO HILLS	\$68,027	\$1,099	67%			\$1,099		\$69,126	\$69,126	
539	MORGAN HILL BUS. PARK	\$11,867	\$191	43%			\$191		\$12,058	\$12,058	
542	SUTTER BUSINESS PARK	\$24,910	\$403	55%			\$403		\$25,313	\$25,313	
545	COCHRANE BUSINESS PARK	\$374,418	\$194,372	162%	\$195,393	100%	(\$1,021)		\$373,397	\$192,448	\$180,950
551	JOLEEN WAY	\$29,157	\$35,734	102%	\$41,140	101%	(\$5,406)		\$23,751	\$6,502	\$17,250
TOTAL D	EBT SERVICE FUNDS	\$508,379	\$231,799	147%	\$236,533	100%	(\$4,734)		<u>\$503,645</u>	\$305,447	<u>\$198,200</u>



City of Morgan Hill Fund Activity Summary - Fiscal Year 2003/04 Preliminary For the Month of June 2004 100% of Year Completed

			Revenues	100,000	Expenses		Year to-Date	Ending Fur	d Ralance	Cash and In	vestments
Fund		Fund Balance	YTD	% of	YTD	% of	Deficit or	Linding i di	a Balance	Ousii uliu iii	vestillents
No.	Fund	06-30-03	Actual	Budget	Actual	Budget	Carryover	Reserved ¹	Unreserved	Unrestricted	Restricted ²
NO.	i uiid	00-30-03	Actual	Duugei	Actual	Duugei	Carryover	reserved	Officserved	Official	restricted
							(24, 122, 222)				
640	SEWER OPERATIONS	\$16,004,091	\$5,572,979	102%	\$7,012,775	93%	(\$1,439,796)	\$11,062,087	\$3,502,208	\$3,154,601	\$1,893,436
641	SEWER IMPACT FUND	\$7,772,110	\$2,283,804	364%	\$610,185	17%	\$1,673,619	3,266,076	\$6,179,653		\$6,359,845
642	SEWER RATE STABILIZATION	\$3,804,228	\$149,336	167%	\$2,369	100%	\$146,967		\$3,951,195	\$3,951,194	
643	SEWER-CAPITAL PROJECTS	\$9,683,556	\$545,485	104%	\$750,287	46%	(\$204,802)	6,970,552	\$2,508,202	\$2,773,818	
650	WATER OPERATIONS	\$21,476,576	\$8,084,645	114%	\$6,644,906	27%	\$1,439,739	\$19,518,805	\$3,397,510	\$3,130,152	\$390,097
651	WATER IMPACT FUND	\$3,271,280	\$994,584	150%	\$1,166,922	44%	(\$172,338)	3,580,950	(\$482,009)		(\$273,277)
652	WATER RATE STABILIZATION	\$867,428	\$8,763	43%	\$850,551	100%	(\$841,788)		\$25,640	\$25,640	
653	WATER -CAPITAL PROJECT	\$9,092,130	\$776,991	193%	\$1,213,880	41%	(\$436,889)	5,545,200	\$3,110,041	\$3,420,591	
TOTAL E	NTERPRISE FUNDS	<u>\$71,971,399</u>	<u>\$18,416,587</u>	<u>124%</u>	<u>\$18,251,875</u>	<u>67%</u>	<u>\$164,712</u>	<u>\$49,943,670</u>	<u>\$22,192,440</u>	<u>\$16,455,996</u>	<u>\$8,370,101</u>
730	DATA PROCESSING	\$436,026	\$280,783	114%	\$205,975	78%	\$74,808	72,077	\$438,757	\$472,177	
740	BUILDING MAINTENANCE	\$400,151	\$892,494	100%	\$443,882	67%	\$448,612	29,198	\$819,565	\$874,227	
745	CIP ADMINISTRATION	\$59,437	\$1,297,427	90%	\$1,297,220	84%	\$207	104,582	(\$44,938)	\$119,702	
760	UNEMPLOYMENT INS.	\$47,278	\$22,088	75%	\$39,650	132%	(\$17,562)		\$29,716	\$29,716	
770	WORKER'S COMP.	\$6,147	\$707,024	103%	\$789,835	107%	(\$82,811)	22,575	(\$99,239)	\$553,335	\$40,000
790	EQUIPMENT REPLACEMENT	\$3,379,971	\$240,019	89%	\$43,758	17%	\$196,261	762,597	\$2,813,635	\$3,022,199	
793	CORPORATION YARD	\$264,851	\$208,486	130%	\$211,434	124%	(\$2,948)	268,446	(\$6,543)	\$31,267	
795	GEN'L LIABILITY INS.	\$856,668	\$388,540	100%	\$391,724	105%	(\$3,184)		\$853,484	\$1,179,414	
TOTAL IN	ITERNAL SERVICE FUNDS	<u>\$5,450,529</u>	<u>\$4,036,861</u>	<u>98%</u>	\$3,423,478	<u>85%</u>	<u>\$613,383</u>		\$4,804,437	<u>\$6,282,037</u>	<u>\$40,000</u>
		T	Ţ								
820	SPECIAL DEPOSITS									\$924,753	
841	M.H. BUS.RANCH A.D.	\$1,649,856	\$728,834	99%	\$2,010,915	278%	(\$1,282,081)		\$367,775	\$367,775	
842	M.H. BUS. RANCH II A.D.	\$107,240	\$66,658	179%	\$142,546	367%	(\$75,888)		\$31,352	\$31,352	
843	M.H. BUS. RANCH 1998	\$1,492,569	\$675,252	140%	\$873,884	100%	(\$198,632)		\$1,293,937	\$408,377	\$885,560
844	MH RANCH RSMNT 2004A		\$760,713		\$590,195	n/a	\$170,518		\$170,518	\$404	\$170,114
845	MADRONE BP-TAX EXEMPT	\$1,312,253	\$794,423		\$809,419	101%	(\$14,996)		\$1,297,257	\$498,394	\$798,861
846	MADRONE BP-TAXABLE	\$256,944	\$166,856	122%	\$172,289	100%	(\$5,433)		\$251,510	\$97,273	\$154,238
848	TENNANT AVE.BUS.PK A.D.	\$360,919	\$66,717	140%		na	\$66,717		\$427,636	\$427,638	
881	POLICE DONATION TRUST FUND	\$20,938	\$344	140%			\$344		\$21,282		\$21,281
TOTAL A	GENCY FUNDS	<u>\$5,200,719</u>	<u>\$3,259,797</u>	<u>122%</u>	<u>\$4,599,248</u>	<u>177%</u>	<u>(\$1,339,451)</u>		<u>\$3,861,267</u>	<u>\$2,755,966</u>	<u>\$2,030,054</u>
SUMMAR	Y BY FUND TYPE										
5 5	-	\$44.400.F05	645 400 475 I	050/	#4E 070 0E0	050/1	(0077.004)	#204 204 T	£40.004.707.	€44 F0F 007 II	£4.400
	GENERAL FUND GROUP	\$11,136,505	\$15,193,475	95%	\$15,870,859	95%	(\$677,384)	\$364,384	\$10,094,737	\$11,525,267	\$4,400
	SPECIAL REVENUE GROUP	\$6,911,827	\$6,657,447	135%	\$6,656,627	69%	\$820	\$1,472,817	\$5,439,830	\$6,215,749	* 400.000
	DEBT SERVICE GROUP	\$508,379	\$231,799	147%	\$236,533	100%	(\$4,734)	007.050.405	\$503,645	\$305,447	\$198,200
	CAPITAL PROJECTS GROUP	\$68,236,786	\$27,230,953	69%	\$42,129,231	59%	(\$14,898,278)	\$27,058,469	\$26,280,039	\$20,551,468	\$14,329,113
	ENTERPRISE GROUP	\$71,971,399	\$18,416,587	124%	\$18,251,875	67%	\$164,712	\$49,943,670	\$22,192,440	\$16,455,996	\$8,370,101
	INTERNAL SERVICE GROUP	\$5,450,529	\$4,036,861	98%	\$3,423,478	85%	\$613,383		\$4,804,437	\$6,282,037	\$40,000
	AGENCY GROUP	\$5,200,719	\$3,259,797	122%	\$4,599,248	177%	(\$1,339,451)		\$3,861,267	\$2,755,966	\$2,030,054
	TOTAL ALL GROUPS	<u>\$169,416,144</u>	<u>\$75,026,919</u>	<u>91%</u>	<u>\$91,167,851</u>	<u>69%</u>	(\$16,140,932)	<u>\$78,839,340</u>	<u>\$73,176,395</u>	<u>\$64,091,930</u>	<u>\$24,971,868</u>
	TOTAL CASH AND INVESTMENTS									\$89,063,798	

For Enterprise Funds - Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT PRELIMINARY FOR THE MONTH OF JUNE 2004 FOR THE FISCAL YEAR OF 2003-04

	Invested		Book Value	Investment Category	% of	Market
	in Fund	Yield	End of Month	Subtotal at Cost	Total	Value
<u>Investments</u>						
State Treasurer LAIF - City	All Funds Pooled	1.45%	\$26,388,757		29.63%	\$26,408,669
- RDA	RDA	1.45%	\$5,462,440		6.13%	\$5,466,562
- Corp Yard	Corp Yard	1.45%	\$52,203		0.06%	\$52,243
Federal Issues	All Funds Pooled	3.20%	\$49,245,448		55.29%	\$48,430,893
SVNB CD	All Funds Pooled	2.50%	\$2,000,000		2.25%	\$2,000,000
Money Market	All Funds Pooled	0.99%	\$62,394	\$83,211,242	0.07%	\$62,394
Bond Reserve Accounts - held by trustees						
BNY - 2002 SCRWA Bonds						
MBIA Repurchase & Custody Agmt	Sewer	4.78%	\$1,849,399			
Blackrock Provident Temp Fund		0.66%	\$44,036		2.13%	\$1,893,436
US Bank - 1999 Water C.O.P.						
First American Treasury Obligation	Water	0.45%	\$390,097		0.44%	\$390,097
US Bank - MH Ranch 98	MH Ranch					
First American Treasury Obligation	Agency Fund	0.45%	\$885,560		0.99%	\$885,560
US Bank - Madrone Bus Park Tax Exempt	Madrone Bus Park					
First American Treasury Obligation	Agency Fund	0.45%	\$798,861		0.90%	\$798,861
US Bank - Madrone Bus Park Taxable	Madrone Bus Park					
First American Treasury Obligation	Agency Fund	0.45%	\$154,238		0.17%	\$154,238
BNY - MH Ranch 2004 A	MH Ranch Bus Park					
Blackrock Provident Temp Fund	Agency Fund	0.66%	\$170,114	\$4,292,305	0.19%	\$170,114
Checking Accounts	3,		,	, , , , , , , , , , , , , , , , , , , ,		,
General Checking	All Funds		\$1,500,000		1.68%	\$1,500,000
Dreyfuss Treas Cash Management Account	All Funds		\$15,851		0.02%	\$15,851
Athens Administators Workers' Comp	Workers' Comp		\$40,000		0.04%	\$40,000
Petty Cash & Emergency Cash	Various Funds	-	\$4,400	\$1,560,251	0.00%	\$4,400
Total Cash and Investments			\$89,063,798	\$89,063,798	100.00%	\$88,273,318
MH Financing Authority Investment in MH Ranch AD Imprvmt Bond Series 2004		1.75% to 4.50%	<u>\$4,795,000</u>			<u>Unavailable</u>

CASH ACTIVITY SUMMARY FY 03/04

	7/1/2003	Change in	06/30/04		
Fund Type	Balance	Cash Balance	Balance	Restricted	Unrestricted
General Fund	\$11,198,677	\$330,990	\$11,529,667	\$4,400	\$11,525,267
Community Development	\$1,598,168	(\$99,689)	\$1,498,479	\$0	\$1,498,479
RDA (except Housing)	\$18,789,948	(\$12,837,875)	\$5,952,073	\$0	\$5,952,073
Housing / CDBG	\$6,264,517	\$44,404	\$6,308,921	\$0	\$6,308,921
Water - Operations	\$2,197,360	\$1,322,888	\$3,520,248	\$390,097	\$3,130,151
Water Other	\$4,882,333	(\$1,709,378)	\$3,172,955	-\$273,277	\$3,446,232
Sewer - Operations	\$6,399,908	(\$1,351,871)	\$5,048,037	\$1,893,436	\$3,154,601
Sewer Other	\$11,899,860	\$1,184,997	\$13,084,857	\$6,359,845	\$6,725,012
Other Special Revenue	\$3,011,901	\$436,060	\$3,447,961	\$0	\$3,447,961
Streets and Capital Projects (except RDA)	\$24,402,072	(\$513,177)	\$23,888,895	\$14,329,112	\$9,559,783
Assessment Districts	\$504,821	(\$1,174)	\$503,647	\$198,200	\$305,447
Internal Service	\$5,993,387	\$328,649	\$6,322,036	\$40,000	\$6,282,036
Agency Funds	\$5,943,872	(\$1,157,850)	\$4,786,022	\$2,030,055	\$2,755,967
Total	<u>\$103,086,824</u>	(\$14,023,026)	\$89,063,798	<u>\$24,971,868</u>	\$64,091,930

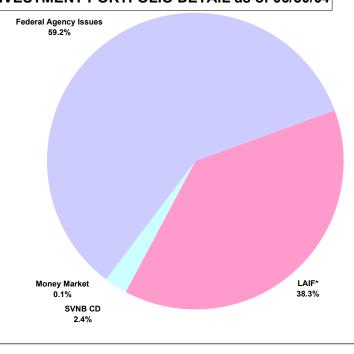
Note: See Investment Porfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports. *Market Value as of 05/31/04

I certify the information on the investment reports on pages 6-8 has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by:		Approved by:		
4	Lourdes Reroma Accountant I	, , , , , , , , , , , , , , , , , , ,	Jack Dilles Director of Finance	
Verified by:	Tina Reza Assistant Director of Finance		Mike Roorda City Treasurer	

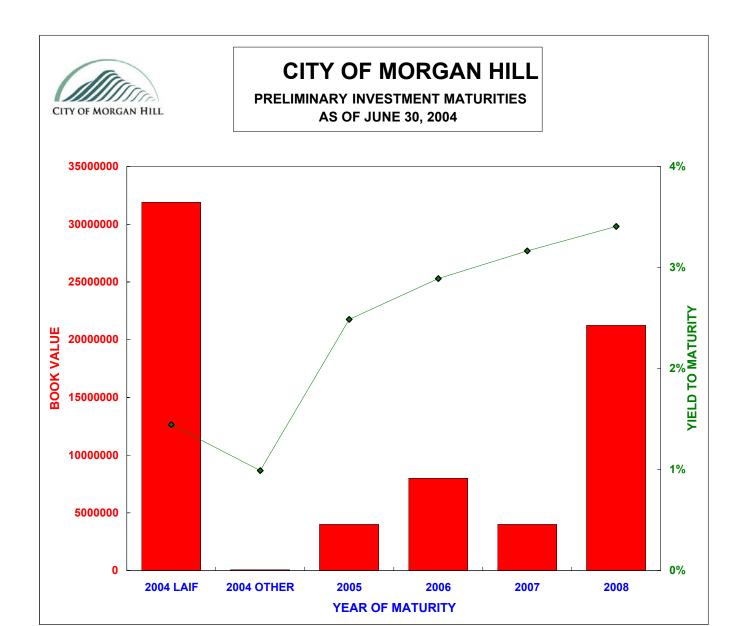


CITY OF MORGAN HILL PRELIMINARY INVESTMENT PORTFOLIO DETAIL as of 06/30/04



Investment Type	Purchase Date	Book Value	% of Portfolio	Market Value	Stated Rate	Interest Earned	Next Call Date	Date of Maturity	Years to Maturity
LAIF*		\$31,903,400	38.34%	\$31,927,474	1.445%	\$660,299			0.003
SVNB CD	07/07/03	\$2,000,000	2.40%	\$2,000,000	2.500%	\$34,000		07/07/05	1.019
Federal Agency Issues									
Fed Home Loan Bank	05/21/04	\$2,000,000	2.40%	\$1,997,500	2.474%	\$5,513	07/21/04	11/21/05	1.392
Fed Home Loan Bank	02/26/04	\$2,000,000	2.40%	\$1,985,620	2.563%	\$17,744	08/26/04	05/26/06	1.901
Fed Home Loan Bank	06/02/04	\$2,000,000	2.40%	\$2,000,000	3.100%	\$4,913	07/02/04	06/02/06	1.921
Fed Home Loan Bank	06/07/04	\$2,000,000	2.40%	\$2,003,120	3.250%	\$4,262	09/07/04	09/07/06	2.186
Fed Home Loan Bank	03/29/04	\$2,000,000	2.40%	\$1,953,120	2.650%	\$13,538	09/29/04	12/29/06	2.496
Fed Home Loan Bank	03/18/04	\$2,000,000	2.40%	\$1,973,120	3.030%	\$17,291	09/18/04	06/18/07	2.964
Fed Home Loan Bank	03/29/04	\$2,000,000	2.40%	\$1,944,380	3.300%	\$16,859	09/28/04	12/28/07	3.493
Fed Home Loan Mgt Corp	03/12/03	\$2,000,000	2.40%	\$1,981,080	3.500%	\$70,000	09/12/04	03/12/08	3.699
Fed Home Loan Bank	03/26/03	\$2,000,000	2.40%	\$1,970,000	3.375%	\$67,500	anytime	03/26/08	3.737
Fed Home Loan Mgt Corp	04/16/03	\$2,000,000	2.40%	\$1,984,360	3.600%	\$72,000	10/16/04	04/16/08	3.795
Fed Home Loan Mgt Corp	04/17/03	\$1,995,448	2.40%	\$1,976,500	3.625%	\$75,022	10/17/04	04/17/08	3.797
Fed Farm Credit Bank	06/03/03	\$2,000,000	2.40%	\$1,950,620	3.210%	\$64,200	12/03/04	06/03/08	3.926
Fed Farm Credit Bank	06/12/03	\$2,000,000	2.40%	\$1,931,260	2.950%	\$59,000	07/30/04	06/12/08	3.951
Fed Home Loan Bank	07/30/03	\$2,000,000	2.40%	\$1,930,620	3.000%	\$55,220	07/30/04	07/30/08	4.082
Fed Home Loan Bank	07/30/03	\$2,000,000	2.40%	\$1,950,620	3.243%	\$60,190	07/30/04	07/30/08	4.082
Fed Home Loan Bank	07/30/03	\$2,000,000	2.40%	\$1,960,000	3.400%	\$62,582	07/30/04	07/30/08	4.082
Fed Home Loan Bank	08/14/03	\$1,250,000	1.50%	\$1,237,113	3.690%	\$40,549	08/14/04	08/14/08	4.123
Fed Home Loan Bank	10/15/03	\$2,000,000	2.40%	\$1,993,120	4.000%	\$28,415	10/15/04	10/15/08	4.293
Fed Farm Credit Bank	03/16/04	\$2,000,000	2.40%	\$1,912,500	3.650%	\$21,226	anytime	03/16/09	4.710
Fed Home Loan Bank	03/26/04	\$2,000,000	2.40%	\$1,980,000	4.000%	\$21,746	07/26/04	03/26/09	4.737
Fed Home Loan Bank	04/06/04	\$2,000,000	2.40%	\$1,950,000	3.625%	\$17,036	10/06/04	04/06/09	4.767
Fed Home Loan Bank	04/07/04	\$2,000,000	2.40%	\$1,948,120	3.600%	\$16,721	07/07/04	04/07/09	4.770
Fed National Mortgage	04/16/04	\$2,000,000	2.40%	\$1,958,120	3.750%	\$15,574	07/16/04	04/16/09	4.795
Fed Home Loan Bank	04/29/04	\$2,000,000	2.40%	\$1,957,500	3.750%	\$12,910	07/29/04	04/29/09	4.830
Fed Home Loan Bank	05/18/04	\$2,000,000	2.40%	\$2,002,500	4.500%	\$10,761	07/18/04	05/18/09	4.882
Redeemed FY 03/04						\$352,213			
Sub Total/Average		\$49,245,448	59.18%	\$48,430,893	3.204%	\$1,202,985			3.732
Money Market		\$62,394	0.07%	\$62,394	0.990%	\$8,729			0.003
TOTAL/AVERAGE		\$83,211,242	100.00%	\$82,420,761	2.620%	\$1,906,013			2.236

^{*}Per State Treasurer Report dated 05/31/2004, LAIF had invested approximately 13% of its balance in Treasury Bills and Notes, 21% in CDs, 20% in Commercial Paper and Corporate Bonds, 0% in Banker's Acceptances and 46% in others.



YEAR OF	BOOK	MARKET	AVERAGE	% OF
MATURITY	VALUE	VALUE	RATE	TOTAL
2004 LAIF	\$31,903,399	\$31,927,474	1.445%	38.34%
2004 OTHER	\$62,394	\$62,394	0.990%	0.07%
2005	\$4,000,000	\$3,997,500	2.487%	4.81%
2006	\$8,000,000	\$7,941,860	2.891%	9.61%
2007	\$4,000,000	\$3,917,500	3.165%	4.81%
2008	\$21,245,448	\$20,865,293	3.408%	25.53%
2009	\$14,000,000	\$13,708,740	3.839%	16.82%
TOTAL	\$83,211,241	\$82,420,761	2.620%	100.00%



FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND			71010712	<u> </u>			
TAXES							
Property Taxes - Secured/Unsecured/Prio	1,972,200	1,972,200	2,363,025	120%	2,130,400	232,625	11%
Supplemental Roll	200,000	200,000	120,933	60%	164,068	(43,135)	-26%
Sales Tax	4,650,000	4,650,000	4,150,630	89%	4,662,227	(511,597)	-11%
Public Safety Sales Tax	273,000	273,000	215,480	79%	244,466	(28,986)	-12%
Transient Occupancy Taxes	890,000	890,000	679,429	76%	670,866	8,563	1%
Franchise (Refuse ,Cable ,PG&E)	961,180	961,180	831,596	87%	829,878	1,718	0%
Property Transfer Tax	267,800	267,800	424,870	<u>159%</u>	253,359	171,511	<u>68%</u>
TOTAL TAXES	9,214,180	9,214,180	8,785,963	95%	8,955,264	(169,301)	-2%
LICENSES/PERMITS							
Business License	154,500	154,500	154,547	100%	150,709	3,838	3%
Other Permits	48,100	48,100	41,322	<u>86%</u>	41,028	294	<u>1%</u>
TOTAL LICENSES/PERMITS	202,600	202,600	195,869	97%	191,737	4,132	2%
FINES AND PENALTIES							
Parking Enforcement	13,400	13,400	12,980	97%	8,760	4,220	48%
City Code Enforcement	77,300	77,300	49,628	64%	57,017	(7,389)	-13%
Business tax late fee/other fines	2,600	2,600	1,289	<u>50%</u>	1,756	(467)	<u>-27%</u>
TOTAL FINES AND PENALTIES	93,300	93,300	63,897	68%	67,533	(3,636)	-5%
OTHER AGENCIES							
Motor Vehicle in-Lieu	2,080,000	2,080,000	1,566,611	75%	2,035,157	(468,546)	-23%
Other Revenue - Other Agencies	271,900	271,900	248,139	<u>91%</u>	123,512	124,627	<u>101%</u>
TOTAL OTHER AGENCIES	2,351,900	2,351,900	1,814,750	77%	2,158,669	(343,919)	-16%
CHARGES CURRENT SERVICES							
False Alarm Charge	24,700	24,700	28,513	115%	25,192	3,321	13%
Business License Application Review	20,900	20,900	25,796	123%	25,265	531	2%
Recreation Classes	352,740	352,740	260,690	74%	125,072	135,618	108%
General Administration Overhead	2,007,978	2,007,978	2,007,978	100%	1,855,934	152,044	8%
Other Charges Current Services TOTAL CURRENT SERVICES	181,819 2,588,137	181,819 2,588,137	2,700,376	<u>208%</u> 104%	204,065 2,235,528	173,334 464,848	<u>85%</u> 21%
OTHER REVENUE							
Use of money/property	775,550	775,550	720,580	93%	502,193	218,387	43%
Other revenues	24,200	24.200	62,982	260%	59,804	3,178	5%
TOTAL OTHER REVENUE	799,750	799,750	783,562	98%	561,997	221,565	39%
TRANSFERS IN							
Park Maintenance	200,000	200,000	200,000	100%	100,000	100,000	100%
Sewer Enterprise	17,500	17,500	17,500	100%	17,500	-	n/a
Water Enterprise	17,500	17,500	17,500	100%	17,500	-	n/a
Public Safety	273,000	273,000	273,000	100%	270,000	3,000	1%
-	312,000	312,000	312,000	100%	520,332	(208,332)	-40%
Community Cultural Center				7000/		00.050	,
· · · · · · · · · · · · · · · · · · ·	3,986	3,986	29,058	<u>729%</u>		29,058	<u>n/a</u>
Community Cultural Center	3,986 823,986	3,986 823,986	29,058 849,058	729% 103%	925,332	<u>29,058</u> (76,274)	<u>n/a</u> -8%



FUND			CURRENT			INCR (DECR)	
REVENUE	ADOPTED	AMENDED	YTD	%	PRIOR	FROM PRIOR	%
SOURCE	BUDGET	BUDGET	ACTUAL	OF BUDGET	YTD	YTD	CHANGE
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE	050 400	050 400	005 540	1000/	700.040	(00,000)	20/
Gas Tax 2105 - 2107.5	653,400	653,400	665,516	102%	726,348	(60,832)	-8%
Measure A & B	-	-	-	n/a	-	-	n/a
Tea 21	-	-	-	n/a	-	(050,000)	n/a
Transfers In	700,000	725,000	725,000	100%	977,000	(252,000)	-26%
Project Reimbursement	44.004	-	606,183	n/a	110,965	495,218	446%
Interest / Other Revenue/Other Charges	14,861	14,861	31,136	210%	42,274	(11,138)	<u>-26%</u>
202 STREET MAINTENANCE	1,368,261	1,393,261	2,027,835	146%	1,856,587	171,248	9%
204/205 PUBLIC SAFETY TRUST							
Interest Income	9,956	9,956	7,119	72%	17,229	(10,110)	-59%
Police Grant/SLEF	100,000	100,000	100,000	100%	100,000	-	n/a
PD Block Grant	-	-	-	n/a	-	-	n/a
CA Law Enforcement Equip.Grant	-	-	-	n/a	20,765	(20,765)	-100%
Federal Police Grant (COPS)	-	-	-	n/a	17,874	(17,874)	-100%
<u>Transfers In</u>		834		<u>n/a</u>			<u>n/a</u>
04/205 PUBLIC SAFETY TRUST	109,956	110,790	107,119	97%	155,868	(48,749)	-31%
06 COMMUNITY DEVELOPMENT							
Building Fees	1,100,500	1,100,500	1,922,160	175%	1,453,488	468,672	32%
Planning Fees	616,496	616,496	447,473	73%	482,648	(35,175)	-7%
Engineering Fees	519,600	519,600	389,968	75%	607,206	(217,238)	-36%
Other Revenue/Current Charges	9,763	9,763	28,413	291%	48,220	(19,807)	-41%
<u>Transfers</u>	30,000	55,486	30,000	<u>54%</u>	<u> </u>	30,000	n/a
206 COMMUNITY DEVELOPMENT	2,276,359	2,301,845	2,818,014	122%	2,591,562	226,452	9%
207 GENERAL PLAN UPDATE	76,087	76,087	102,821	135%	122,864	(20,043)	-16%
215 and 216 HCD BLOCK GRANT							
HCD allocation	152,000	152,000	24,178	16%	2,800	21,378	764%
Interest Income/Other Revenue	3,900	3,900	6,781	174%	15,581	(8,800)	-56%
<u>Transfers</u>	782	782		<u>n/a</u>			n/a
15 and 216 HCD BLOCK GRANT	156,682	156,682	30,959	20%	18,381	12,578	68%
10 COMMUNITY CENTER	6,198	6,198	3,892	63%	122,594	(118,702)	-97%
20 MUSEUM RENTAL	41	41	8	20%	74	(66)	-89%
25 ASSET SEIZURE	583	583	617	106%	1,246	(629)	-50%
29 LIGHTING AND LANDSCAPE	127,770	127,770	134,435	105%	133,138	1,297	1%
32 ENVIRONMENTAL PROGRAMS	387,209	387,209	354,523	92%	331,806	22,717	7%
34 MOBILE HOME PARK RENT STAB.	306,298	306,298	304,722	99%	17,826	286,896	1609%
35 SENIOR HOUSING	6,897	6,897	4,106	60%	17,592	(13,486)	-77%
236 HOUSING MITIGATION	27,775	27,775	106,951	385%	27,519	79,432	289%
40 EMPLOYEE ASSISTANCE	20,162	20,162	91,445	454%	54,822	36,623	67%
247 ENVIRONMENT REMEDIATION	,=	,=	570,000	n/a	,	570,000	n/a
TOTAL SPECIAL REVENUE FUNDS	4,870,278	4,921,598	6,657,447	135%	5,451,879	1,205,568	22%



CITY OF MORGAN HILL	100% of Year C	ompieted					
FUND	<u> </u>		CURRENT			INCR (DECR)	
REVENUE	ADOPTED	AMENDED	YTD	%	PRIOR	FROM PRIOR	%
SOURCE	BUDGET	BUDGET	ACTUAL	OF BUDGET	YTD	YTD	CHANG
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	435,072	435,072	971,476	223%	464,751	506,725	109%
302 PARK MAINTENANCE	257,923	257,923	319,002	124%	323,663	(4,661)	-1%
303 LOCAL DRAINAGE	291,028	291,028	206,989	71%	367,515	(160,526)	-44%
304 LOCAL DRAINAGE/NON AB1600	157,378	157,378	135,702	86%	276,512	(140,810)	-51%
305 OFF-STREET PARKING	95	95	65	68%	104	(39)	-38%
306 OPEN SPACE	57,428	57,428	236,532	412%	87,788	148,744	169%
309 TRAFFIC MITIGATION	662,507	662,507	1,456,787	220%	854,872	601,915	70%
311 POLICE MITIGATION	51,569	51,569	118,085	229%	86,650	31,435	36%
313 FIRE MITIGATION	147,884	147,884	235,652	159%	221,131	14,521	7%
317 RDA CAPITAL PROJECTS							
Property Taxes & Supplemental Roll	14,086,573	14,086,573	13,595,735	97%	14,669,674	(1,073,939)	-7%
Development Agreements			-	n/a		-	n/a
Interest Income, Rents			236,061	n/a	274,569	(38,508)	-14%
Other Agencies/Current Charges	9,450,000	9,450,000	1,594,237	<u>17%</u>	117,542	1,476,695	1256%
317 RDA CAPITAL PROJECTS	23,536,573	23,536,573	15,426,033	66%	15,061,785	364,248	2%
327/328 RDA L/M HOUSING							
Property Taxes & Supplemental Roll	3,791,085	3,791,085	4,350,645	115%	4,195,953	154,692	4%
Interest Income, Rent	45,364	45,364	553,010	1219%	345,889	207,121	60%
Other	90	90	760,738	<u>845264%</u>	91,275	669,463	733%
327/328 RDA L/M HOUSING	3,836,539	3,836,539	5,664,393	148%	4,633,117	1,031,276	22%
346 PUBLIC FACILITIES NON-AB1600	9,875,877	9,875,877	1,762,576	18%	290,050	1,472,526	508%
347 PUBLIC FACILITIES	46,900	155,861	505,678	324%	89,082	416,596	468%
348 LIBRARY	30,782	30,782	73,725	240%	44,169	29,556	67%
350 UNDERGROUNDING	31,495	31,495	97,778	310%	199,559	(101,781)	-51%
340 MORGAN HILL BUS.RANCH CIP I	1,144	1,144	781	68%	1,253	(472)	-38%
342 MORGAN HILL BUS.RANCH CIP II	1,282	1,282	877	68%	1,407	(530)	-38%
360 COMMUNITY/REC IMPACT FUND			18,822	n/a	-	18,822	n/a
OTAL CAPITAL PROJECTS FUNDS	39,421,476	39,530,437	27,230,953	69%	23,003,408	4,227,545	18%
DEBT SERVICE FUNDS	33,421,476	33,333,437	21,200,000	33 /3	20,000,100	4,221,040	10,
527 HIDDEN CREEK	_	<u>-</u>	-	n/a	_	<u>-</u>	n/a
533 DUNNE AVE. / CONDIT ROAD	-	-	_	n/a	-	-	n/a
336 ENCINO HILLS	1,631	1,631	1,099	67%	1,755	(656)	-37%
39 MORGAN HILL BUSINESS PARK	447	447	191	43%	297	(106)	-36%
542 SUTTER BUSINESS PARK	730	730	403	55%	646	(243)	-38%
545 COCHRANE BUSINESS PARK	119,887	119,887	194,372	162%	241,203	(46,831)	-19%
551 JOLEEN WAY	34,955	34,955	35,734	102%	33,599	2,135	6%
O. COLLEN WAT	U-1,000	04,000		102/0		2,100	3 70
TOTAL DEBT SERVICE FUNDS	157,650	157,650	231,799	147%	277,500	(45,701)	-16%



FUND REVENUE	ADOPTED	AMENDED	CURRENT YTD	%	PRIOR	INCR (DECR) FROM PRIOR	%
SOURCE	BUDGET	BUDGET	ACTUAL	OF BUDGET	YTD	YTD	CHANG
NTERPRISE FUNDS							
40 SEWER OPERATION							
Sewer Service Fees	5,321,460	5,321,460	5,387,924	101%	4,997,968	389,956	8%
Interest Income	51,960	51,960	94,081	181%	121,935	(27,854)	-23%
Other Revenue/Current Charges	113,950	113,950	90,974	<u>80%</u>	130,411	(39,437)	-30%
40 SEWER OPERATION	5,487,370	5,487,370	5,572,979	102%	5,250,314	322,665	6%
41 SEWER EXPANSION							
Interest Income	26,580	26,580	90,303	340%	146,045	(55,742)	-38%
Connection Fees	600,000	600,000	2,192,709	365%	860,023	1,332,686	155%
<u>Other</u>			792	<u>n/a</u>	792		n/a
41 SEWER EXPANSION	626,580	626,580	2,283,804	364%	1,006,860	1,276,944	127%
42 SEWER RATE STABILIZATION	89,558	89,558	149,336	167%	308,725	(159,389)	-52%
43 SEWER-CAPITAL PROJECT	525,416	525,416	545,485	104%	590,028	(44,543)	-8%
OTAL SEWER FUNDS	6,728,924	6,728,924	8,551,604	127%	7,155,927	1,395,677	20%
50 WATER OPERATION							
Water Sales	5,738,350	5,738,350	6,413,116	112%	5,528,471	884,645	16%
Meter Install & Service	40,000	40,000	35,960	90%	53,410	(17,450)	-33%
Transfers-In, and Interest Income	1,045,785	1,045,785	1,097,301	105%	282,152	815,149	289%
Other Revenue/Current Charges	249,584	249,584	538,268	<u>216%</u>	335,823	202,445	<u>60%</u>
50 WATER OPERATION	7,073,719	7,073,719	8,084,645	114%	6,199,856	1,884,789	30%
51 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	501,803	501,803	569,900	114%	477,487	92,413	19%
Water Connection Fees	160,000	160,000	424,684	265%	159,542	265,142	166%
51 WATER EXPANSION	661,803	661,803	994,584	150%	637,029	357,555	56%
52 Water Rate Stabilization	20,517	20,517	8,763	43%	22,517	(13,754)	-61%
	·		•			,	
53 Water Capital Project	402,395	402,395	776,991	193%	1,301,960	(524,969)	-40%
OTAL WATER FUNDS	8,158,434	8,158,434	9,864,983	121%	8,161,362	1,703,621	21%
OTAL ENTERPRISE FUNDS	14,887,358	14,887,358	18,416,587	124%	15,317,289	3,099,298	20%
NTERNAL SERVICE FUNDS							
30 INFORMATION SERVICES	245,262	245,262	280,783	114%	381,188	(100,405)	-26%
40 BUILDING MAINTENANCE SERVICES	891,042	891,042	892,494	100%	837,141	55,353	7%
45 CIP ADMINISTRATION	1,447,120	1,447,120	1,297,427	90%	1,165,818	131,609	11%
60 UNEMPLOYMENT INSURANCE	29,452	29,452	22,088	75%	970	21,118	2177%
70 WORKERS COMPENSATION	687,700	687,700	707,024	103%	450,494	256,530	57%
90 EQUIPMENT REPLACEMENT	198,367	268,313	240,019	89%	492,934	(252,915)	-51%
93 CORPORATION YARD COMMISSION	160,005	160,005	208,486	130%	1,077,240	(868,754)	-81%
95 GENERAL LIABILITY INSURANCE	389,927	389,927	388,540	100%	355,592	32,948	9%
OTAL INTERNAL SERVICE FUNDS	4,048,875	4,118,821	4,036,861	98%	4,761,377	(724,516)	-15%



FUND			CURRENT			INCR (DECR)	
REVENUE	ADOPTED	AMENDED	YTD	%	PRIOR	FROM PRIOR	%
SOURCE	BUDGET	BUDGET	ACTUAL	OF BUDGET	YTD	YTD	CHANGE
AGENCY FUNDS							
841 M.H. BUS.RANCH A.D. I	736,175	736,175	728,834	99%	732,715	(3,881)	-1%
842 M.H. BUS.RANCH A.D. II	37,177	37,177	66,658	179%	41,959	24,699	59%
843 M.H. BUS.RANCH 1998	883,205	883,205	675,252	76%	917,285	(242,033)	-26%
844 M.H. RANCH REFUNDING 2004A			760,713	n/a	-	760,713	n/a
845 MADRONE BP-TAX EXEMPT	807,439	807,439	794,423	98%	796,714	(2,291)	0%
846 MADRONE BP-TAXABLE	167,254	167,254	166,856	100%	208,740	(41,884)	-20%
848 TENNANT AVE.BUS.PK A.D.	39,523	39,523	66,717	169%	39,233	27,484	70%
881 POLICE DONATION TRUST FUND	245	245	344	140%	543	(199)	-37%
TOTAL AGENCY FUNDS	2,671,018	2,671,018	3,259,797	122%	2,737,189	522,608	19%
TOTAL FOR ALL FUNDS	82,130,508	82,360,735	75,026,919	91%	66,644,702	8,624,923	13%



FUNI								ı
		MONTH						PERCENT OF
NO.	FUND/ACTIVITY	ACTUAL	ADOPTED	AMENDED	YTD	OUTSTANDING	TOTAL	TOTAL TO
		EXPENSES	BUDGET	BUDGET	EXPENSES	ENCUMBRANCE	ALLOCATED	BUDGET

GENERAL GOVERNMENT							
GENERAL GOVERNMENT							
COUNCIL AND MISCELLANEOUS GOVT.	•						
City Council	14,634	194,400	194,400	208,900	23,996	232,896	120%
Community Promotions	13,056	31,542	31,542	31,449		31,449	100%
COUNCIL AND MISCELLANEOUS GO	27,690	225,942	225,942	240,349	23,996	264,345	117%
CITY ATTORNEY	59,484	615,917	615,917	600,206	81,555	681,761	<u>111%</u>
CITY MANAGER							
City Manager	28,434	391,162	391,162	363,478		363,478	93%
Cable Television	4,212	45,236	46,986	42,470	4,019	46,489	99%
Communications & Marketing	7,368	106,576	111,834	98,950	4,085	103,035	92%
CITY MANAGER	40,014	542,974	549,982	504,898	8,104	513,002	93%
RECREATION							
Recreation	76,262	455,503	463,468	533,052	8,781	541,833	117%
Community & Cultural Center	42,655	739,223	766,023	520,785	133,774	654,559	85%
Aquatics Center	174,190	273,890	354,890	275,722	25,090	300,812	85%
Building Maintenance (CCC)	43,687	416,108	427,967	502,581	20,027	522,608	122%
RECREATION	336,794	1,884,724	2,012,348	1,832,140	187,672	2,019,812	100%
HUMAN RESOURCES							
Human Resources	43,560	582,687	582,687	539,225	-	539,225	93%
Volunteer Programs	1,791	34,442	34,442	22,785		22,785	<u>66%</u>
HUMAN RESOURCES	45,351	617,129	617,129	562,010		562,010	91%
CITY CLERK							
City Clerk	18,668	302,672	303,533	233,809	861	234,670	77%
Elections	2,963	70,576	70,576	62,776	<u> </u>	62,776	89%
CITY CLERK	21,631	373,248	374,109	296,585	861	297,446	80%
FINANCE	76,825	889,208	891,223	898,198		898,198	101%
MEDICAL SERVICES	-		5,000		-	-	n/a
OTAL GENERAL GOVERNMENT	607,789	5,149,142	5,291,650	4,934,386	302,188	5,236,574	99%
PUBLIC SAFETY							
POLICE							
POLICE DD Administration	44.077	404 744	404 744	493.158		400 450	1000/
PD Administration	41,077	491,711	491,711	,	40.007	493,158	100%
Patrol	284,339	3,207,070	3,274,188	3,052,188	18,827	3,071,015	94%
Support Services	91,820	897,092	897,092	863,010	4,719	867,729	97%
Emergency Services/Haz Mat	2,372	33,858 1,176,399	33,858 1,179,974	63,859 1,025,150	4,013 9,409	67,872 1,034,559	200%
Special Operations Animal Control	81,683				9,409		88%
Animai Control Dispatch Services	18,072 71,458	76,159 858,218	76,159	85,489 806,200	1,100	85,489 807,300	112%
POLICE POLICE	590,821	6,740,507	859,318 6,812,300	6,389,054	38,068	6,427,122	94% 94%
FOLICE	390,021	6,740,507	6,612,300	6,369,034	30,000	0,427,122	34 /0
FIRE	312,081	3,745,220	3,745,220	3,744,977	-	3,744,977	100%
OTAL PUBLIC SAFETY	902,902	10,485,727	10,557,520	10,134,031	38,068	10,172,099	96%
. COMMUNITY IMPROVEMENT							
PARK MAINTENANCE	91,428	810,323	822,840	706,922	24,128	731,050	89%
OTAL COMMUNITY IMPROVEMENT	91,428	810,323	822,840	706,922	24,128	731,050	89%



			100 /0 OI I Cai	Completed				
FUND NO.	FUND/ACTIVITY	THIS MONTH ACTUAL EXPENSES	ADOPTED BUDGET	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET
IV. TRA	NSFERS							
	Public Safety			834		_	_	n/a
	Community Development			15,000				
	Info Systems	35,520 60,000		35,520	35,520 60,000	-	35,520 60,000	n/a
	Employee Assistance	60,000		60,000	60,000	-	60,000	<u>n/a</u>
TC	OTAL TRANSFERS	95,520	-	111,354	95,520	-	95,520	n/a
TOTAL (GENERAL FUND	1,697,639	16,445,192	16,783,364	15,870,859	364,384	16,235,243	97%
SPECIAI	L REVENUE FUNDS							
202 STR	EET MAINTENANCE							
	Street Maintenance/Traffic	111,637	1,533,793	1,672,928	1,412,867	116,698	1,529,565	91%
	Congestion Management	3,521	78,868	78,868	65,358	-	65,358	83%
202 STR	Street CIP EET MAINTENANCE	40,219 155,377	<u>514,800</u> 2,127,461	1,261,206 3,013,002	697,480 2,175,705	253,099 369,797	950,579 2,545,502	<u>75%</u> 84%
204/205	PUBLIC SAFETY/SUPP.LAW	22,799	273,582	273,582	273,582		273,582	100%
		22,700	270,002	270,002	270,002		270,002	10070
206 COI	MMUNITY DEVELOPMENT FUND	107.007	070 107	4 000 050	4 000 700	101.000	4 005 700	4.400/
	Planning Building	127,337 66,589	979,437 956,070	1,239,253 1,016,487	1,223,790 804,392	161,992 47,255	1,385,782 851,647	112% 84%
	PW-Engineering	85,690	1,029,375	1,010,467	918,813	36,977	955,790	89%
206 COI	MMUNITY DEVELOPMENT FUND	279,616	2,964,882	3,328,015	2,946,995	246,224	3,193,219	96%
207	GENERAL PLAN UPDATE	2,582	71,257	197,413	62,904	87,837	150,741	76%
210	COMMUNITY CENTER	26,000	312,000	312,000	312,000	-	312,000	100%
215/216	CDBG	25,960	195,769	463,742	181,091	106,690	287,781	62%
220	MUSEUM RENTAL	208	2,422	2,422	2,242	-	2,242	93%
225	ASSET SEIZURE					-	-	n/a
229	LIGHTING AND LANDSCAPE	21,525	154,755	167,001	156,027	9,722	165,749	99%
232	ENVIRONMENT PROGRAMS	73,730	452,029	499,894	391,812	25,233	417,045	83%
234	MOBILE HOME PARK	9,366	39,661	339,661	116,190	225,016	341,206	100%
235	SENIOR HOUSING TRUST FUN	-	14,300	14,300	6,450	2,150	8,600	60%
236	HOUSING MITIGATION FUND	4 4 4 0	1,033,497	1,033,497	13,340	1,660	15,000	1%
240	EMPLOYEE ASSISTANCE	1,148	20,000	20,000	18,289	-	18,289	91%
TOTAL S	SPECIAL REVENUE FUNDS	618,311	7,661,615	9,664,529	6,656,627	1,074,329	7,730,956	80%
CAPITAI	L PROJECT FUNDS							
301	PARK DEVELOPMENT	26,485	1,570,296	2,114,454	383,490	95,305	478,795	23%
302	PARK MAINTENANCE	50,000	200,000	200,000	200,000	-	200,000	100%
303	LOCAL DRAINAGE	104,024	2,028,393	2,365,774	109,100		109,100	5%
304	LOCAL DRAIN. NON-AB1600	46,266	191,868	218,868	149,273	46,849	196,122	90%
305	OFF STREET PARKING		3,986	3,986	4,058	-	4,058	102%
309	TRAFFIC MITIGATION	319,970	936,333	2,035,819	978,125	643,238	1,621,363	80%
311	POLICE MITIGATION	554	1,206,645	1,226,645	25,579	10,000	35,579	3% 06%
313 317	FIRE MITIGATION	129 2 025 574	401,545	551,545	520,249 29,773,150	9,101	529,350 34 835 643	96% 85%
31 <i>7</i> 327/328	RDA BUSINESS ASSISTANCE RDA HOUSING	2,025,574 551,847	27,346,151 4,592,332	41,163,703 9,688,767	29,773,150 5,841,615	5,062,493 37,737	34,835,643 5,879,352	85% 61%
346	PUBLIC FAC.NON AB1600	619,631	4,592,332 9,808,000	9,886,767	2,996,186	929,767	3,925,953	61% 40%
347	PUBLIC FACILITIES	291	831,229	958,621	969,401	929,767	979,151	40 % 102%
348	LIBRARY IMPACT	19	225	225	225	9,730	225	102%
350	UNDERGROUNDING	36	190,437	435,592	178,780	66,461	245,241	56%
TOTAL (CAPITAL PROJECTS FUNDS	3,744,826	49,307,440	70,810,655	42,129,231	6,910,701	49,039,932	69%



			100 /6 Of Teal	Completed				
FUND NO.	FUND/ACTIVITY	THIS MONTH ACTUAL EXPENSES	ADOPTED BUDGET	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET
DEBT C	EDVICE FUNDS					1=		
DEBI 2	ERVICE FUNDS							
527	HIDDEN CREEK A.D.	-	-	-	-	-	-	n/a
536	ENCINO HILLS A.D.	-	-	-	-	-	-	n/a
539	MORGAN HILL BUS. PARK A.D	-	-	-	-	-	-	n/a
542 545	SUTTER BUS. PARK A.D. COCHRANE BUS. PARK A.D.	628	- 195,805	195,805	- 195,393	-	- 195,393	n/a 100%
551	JOLEEN WAY A.D.	628	40,540	40,540	41,140	-	41,140	101%
TOTAL	DEBT SERVICE FUNDS	1,256	236,345	236,345	236,533		236,533	100%
FUTER	ODIOE ELINDO							
ENTERF	PRISE FUNDS							
SEWER								
640	SEWER OPERATION	532,905	7,418,125	7,513,797	7,012,775	93,070	7,105,845	95%
641	CAPITAL EXPANSION	16,075	3,576,249	3,697,697	610,185	59,553	669,738	18%
642	SEWER CARITAL PROJECTS	197	2,369	2,369	2,369	005.040	2,369	100%
643 TOTAL 9	SEWER-CAPITAL PROJECTS	83,409	437,843	1,616,022	750,287	265,616	1,015,903	63% 60%
IUIAL	SEWER FUND(S)	632,586	11,434,586	12,829,885	8,375,616	418,239	8,793,855	69%
WATER				_			_	
	Water Operations Division	475,396	6,213,247	6,894,997	5,718,746	530,000	6,248,746	91%
	Meter Reading/Repair	48,398	637,156	669,538	571,717	77,582	649,299	97% 91%
	Utility Billing Water Conservation	27,565 814	391,570 8,213	394,863 8,213	352,257 2,186	7,918 6,112	360,175 8,298	91% 101%
650	WATER OPERATIONS	552,173	7,250,186	7,967,611	6,644,906	621,612	7,266,518	91%
651	CAPITAL EXPANSION	97,520	1,546,253	2,673,518	1,166,922	194,788	1,361,710	51% 51%
652	WATER RATE STABILIZATION	70,879	850,551	850,551	850,551	-	850,551	100%
653	WATER-CAPITAL PROJECTS	192,877	2,158,239	2,951,478	1,213,880	310,551	1,524,431	<u>52%</u>
TOTAL	WATER FUND(S)	913,449	11,805,229	14,443,158	9,876,259	1,126,951	11,003,210	76%
TOTAL	ENTERPRISE FUNDS	1,546,035	23,239,815	27,273,043	18,251,875	1,545,190	19,797,065	73%
INTERN	AL SERVICE FUNDS							
730	INFORMATION SERVICES	14,186	245,262	262,996	205,975	20,016	225,991	86%
740	BUILDING MAINTENANCE	52,417	642,029	665,031	443,882	26,504	470,386	71%
745	CIP ENGINEERING	112,435	1,447,120	1,552,806	1,297,220	86,305	1,383,525	89%
760	UNEMPLOYMENT	00.000	30,000	30,000	39,650		39,650	132%
770 790	WORKERS COMPENSATION EQUIPMENT REPLACEMENT	99,026 147	697,200 251,761	736,200 260,878	789,835 43,758	22,575 208,564	812,410 252,322	110% 97%
793	CORP YARD COMMISSION	41,400	160,005	170,920	211,434	43,686	255,120	149%
795	GEN. LIABILITY INSURANCE	3,613	371,600	371,600	391,724	-	391,724	105%
TOTAL I	INTERNAL SERVICE FUNDS	323,224	3,844,977	4,050,431	3,423,478	407,650	3,831,128	95%
AGENC	Y FUNDS							
044	MODCAN JULI BUO BANGUI	000	700 700	700 700	0.040.04=		0.040.04=	0700/
841	MORGAN HILL BUS RANCH I	628 628	723,706	723,706	2,010,915	-	2,010,915	278% 367%
842 843	MORGAN HILL BUS RANCH II MORGAN HILL BUS RANCH 98	628 628	38,838 871,086	38,838 871,086	142,546 873,884	-	142,546 873,884	367% 100%
844	MH RANCH RSMNT 2004A	56	37 1,000	57 1,000	590,195	-	590,195	n/a
845	MADRONE BP-TAX EXEMPT	628	799,731	799,731	809,419	-	809,419	101%
846	MADRONE BP-TAXABLE	628	172,343	172,343	172,289	-	172,289	100%
848	TENNANT AVE BUS PARK AD	-	,- 10	-,	,3-	-	,- 30	n/a
881	POLICE DONATION TRUST	-	-	-	-	-	-	n/a
TOTAL	AGENCY FUNDS	3,196	2,605,704	2,605,704	4,599,248	-	4,599,248	177%
REPORT	T TOTAL	7,934,487	103,341,088	131,424,071	91,167,851	10,302,254	101,470,105	77%
01		1,004,407	100,041,000	.01,124,011	01,101,001	10,002,207	101,470,100	/0



City of Morgan Hill Enterprise Funds Report - Fiscal Year 2003/04 Preliminary For the Month of June 2004 100% of Year Completed

YTD INCOME STATEMENT FOR CURRENT AND PRIOR YEAR

	Sewer Operations				Water Operations				
			% of	Prior			% of	Prior	
	Budget	YTD	Budget	YTD	Budget	YTD	Budget	YTD	
Operations									
Revenues									
Service Charges Meter Install & Service	\$ 5,321,460	\$ 5,387,924	101%	\$ 4,997,968	\$ 5,738,350 40,000	\$ 6,413,116 35,960	112% 90%	\$ 5,528,471 53,410	
Other	113,950	90,974	80%	130,411	249,584	538,268	216%	335,823	
Total Operating Revenues	5,435,410	5,478,898	101%	5,128,379	6,027,934	6,987,344	116%	5,917,704	
Expenses									
Operations Meter Reading/Repair Utility Billing/Water Conservation	4,533,215	4,397,865	97%	3,785,652	4,750,307 637,156 399,783	4,609,326 571,717 354,443	97% 90% 89%	3,910,058 500,796 369,752	
Total Operating Expenses	4,533,215	4,397,865	97%	3,785,652	5,787,246	5,535,486	96%	4,780,606	
Operating Income (Loss)	902,195	1,081,033		1,342,727	240,688	1,451,858		1,137,098	
Nonoperating revenue (expense)									
Interest Income Interest Expense/Debt Services Principal Expense/Debt Services	51,960 (856,625) (1,115,000)	94,081 (586,625) (1,115,000)	181% 68% 100%	(667,145)	` ' '	51,516 (298,016) (238,314)	94% 104%	108,275 (327,508) (219,331)	
Total Nonoperating revenue (expense)	(1,919,665)	(1,607,544)		(1,180,210)	(545,440)	(484,814)		(438,564)	
Income before operating xfers	(1,017,470)	(526,511)		162,517	(304,752)	967,044		698,534	
Operating transfers in Operating transfers (out)	- (913,285)	- (913,285)	100%	- - (891,377)	1,045,785 (917,500)	1,045,785 (573,090)	100% 62%	173,877 (2,077,500)	
Net Income (Loss)	\$ (1,930,755)	\$ (1,439,796)		\$ (728,860)	\$ (176,467)	\$ 1,439,739		\$ (1,205,089)	



City of Morgan Hill **Balance Sheets - Water and Sewer Funds** Preliminary June 30, 2004 100% of Year Complete

	Sewer Operations (640)	Sewer Expansion Stabilization Capital Projects (641-643)	Water Operations (650)	Water Expansion Stabilization Capital Projects (651-653)
ASSETS				
Cash and investments:				
Unrestricted	3,154,601	6,725,012	3,130,152	3,446,231
Restricted ¹	1,893,436	6,359,845	390,097	(273,277)
Accounts Receivable		7,575		
Utility Receivables	710,135		1,067,834	
Less Allowance for Doubtful Accounts	(2,633)		(2,751)	
Notes Receivable ² Fixed Assets ³	31,802,421	9,911,459	23,624,144	8,620,811
Total Assets	37,557,960	23,003,891	28,209,476	11,793,765
LIABILITIES				
Accounts Payable and Accrued Liabilities Deposits for Water Services & Other Deposits Deferred Revenue 4	266,824	128,213	138,070 38,042	13,943
Bonds Payable	25,390,000		5,985,863	
Discount on Bonds and Other Liabilities	(2,705,125)		(957,773)	
Accrued Vacation and Comp Time	41,966		88,959	
Total liabilities	22,993,665	128,213	5,293,161	13,943
FUND EQUITY				
Contributed Capital Retained Earnings	6,686,483		13,047,150	
Reserved for:				
Noncurrent water/sewer assets & debt	9,075,581	9,911,459	18,507,096	8,620,811
Encumbrances	93,070	325,169	621,612	505,339
Notes Receivable Restricted Cash	1,893,436	0	390,097	
		10 226 626		0.400.450
Total Reserved Retained Earnings Unreserved Retained Earnings	11,062,087	10,236,628	19,518,805	9,126,150
Omeserveu Retaineu Earmings	3,502,208	12,639,050	3,397,510	2,653,672
Total Fund Equity	14,564,295	22,875,678	22,916,315	11,779,822
Total Liabilities and Fund Equity	37,557,960	23,003,891	28,209,476	11,793,765

¹ Restricted for Bond Reserve requirements and capital expansion.
² Includes Note for Sewer Financing Agreements.

³ Includes Water and Sewer infrastructure and the City's share of the Wastewater treatment plant.

⁴ Includes the deferred payment portion of the loans noted above.



City of Morgan Hill Balance Sheets for Major Funds - Fiscal Year 2003/04 Preliminary June 30, 2004 100% of Year Complete

L/M Housing

Sewer

Water

RDA

	(Fund 010)	(Fund 317)	(Fund 327/328)	(Fund 640)	(Fund 650)
ASSETS					
Cash and investments:					
Unrestricted	11,525,267	5,927,073	6,214,144	3,154,601	3,130,152
Restricted ¹	4,400			1,893,436	390,097
Accounts Receivable Utility Receivables (Sewer and Water)	933,378	5,674	7,806	710,135	1,067,834
Less Allowance for Doubtful Accounts				(2,633)	(2,751)
Loans and Notes Receivable ²	440,577	3,331,217	24,165,590		
Prepaid Expense					
Fixed Assets ³		71,049		31,802,421	23,624,144
Total Assets	12,903,622	9,335,013	30,387,540	37,557,960	28,209,476
LIABILITIES					
Accounts Payable and Accrued Liabilities	449,701	1,677,748	38,079	266,824	138,070
Deposits for Water Services & Other Deposits	973,878				38,042
Deferred Revenue ⁴	786,931	1,143,834	6,286,255	05 000 000	5 005 000
Bonds Payable Discount on Bonds and Other Liabilities	233,991			25,390,000 (2,705,125)	5,985,863 (957,773)
Accrued Vacation and Comp Time				41,966	88,959
Total liabilities	2,444,501	2,821,582	6,324,334	22,993,665	5,293,161
FUND EQUITY					
Contributed Capital				6,686,483	13,047,150
Fund Balance / Retained Earnings					
Reserved for:					
Noncurrent water/sewer assets & debt				9,075,581	18,507,096
Encumbrances	364,384	5,062,493	37,737	93,070	621,612
Restricted Cash RDA properties held for resale		71,049		1,893,436	390,097
Loans and Notes Receivable		2,187,383	17,879,336		
Total Reserved Fund Equity	364,384	7,320,925	17,917,073	11,062,087	19,518,805
Designated Fund Equity ⁵	7,300,000				
Unreserved/Undesignated Fund Equity	2,794,737	(807,494)	6,146,133	3,502,208	3,397,510
Total Fund Equity	10,459,121	6,513,431	24,063,206	14,564,295	22,916,315
Total Liabilities and Fund Equity	12,903,622	9,335,013	30,387,540	37,557,960	28,209,476

General Fund

¹ Restricted for Petty Cash use, Bond Reserve requirements and sewer and water capital expansion.

² Includes Housing Rehab loans, Financing Agreements for Public Works Fees and loans for several housing and Agency projects.

³ Includes Water and Sewer infrastructure, the City's share of the Wastewater treatment plant and RDA properties held for resale.

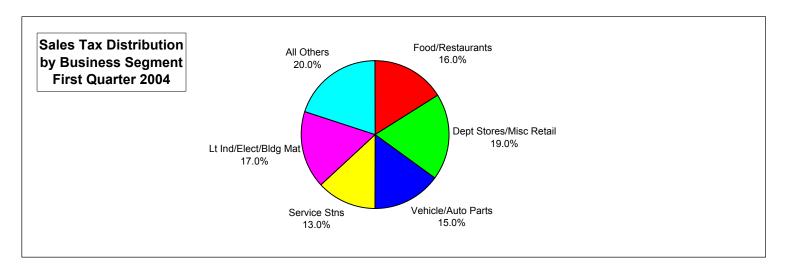
⁴ Includes the deferred payment portion of the loans noted above.

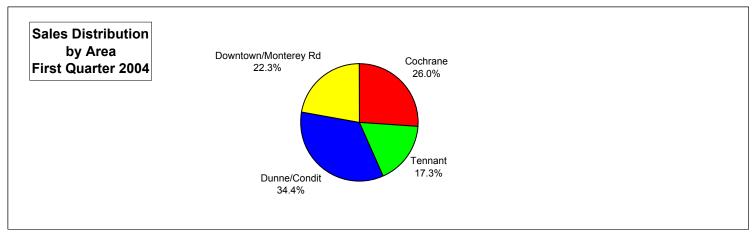
⁵ Designated for economic uncertainty, emergencies, and Fire Master Plan implementation



City of Morgan Hill
Sales Tax Comparison - Fiscal Year 2003/04
Preliminary For the Month of June 2004
100% of Year Completed

	Amount Collecte	d for Month f	or Fiscal Year	Amount Colle	ected YTD for	Fiscal Year	Comparison of YT	D for fiscal years
Month	03/04	02/03	01/02	03/04	02/03	01/02	03/04 to 02/03	03/04 to 01/02
July	\$338,300	\$367,600	\$377,700	\$338,300	\$367.600	\$377,700	(29,300)	(39,400)
August	\$451,000	\$447,000	\$503,600	\$789,300	\$814,600	\$881,300	(25,300)	(92,000)
September	. ,	\$361,932	\$437,056	\$1,022,294	\$1.176.532	\$1,318,356	(154,238)	(296,062)
October	\$316,100	\$354,915	\$339,000	\$1,338,394	\$1.531.447	\$1.657.356	(193,053)	(318,962)
November	\$421,400	\$474,800	\$452,000	\$1,759,794	\$2,006,247	\$2,109,356	(246,453)	(349,562)
December	\$331,624	\$384,154	\$538,465	\$2,091,418	\$2,390,401	\$2,647,821	(298,983)	(556,403)
January	\$349,500	\$368,600	\$393,900	\$2,440,918	\$2,759,001	\$3,041,721	(318,083)	(600,803)
February	\$428,600	\$487,195	\$466,068	\$2,869,518	\$3,246,196	\$3,507,789	(376,678)	(638,271)
March	\$292,930	\$225,908	\$351,548	\$3,162,448	\$3,472,104	\$3,859,337	(309,656)	(696,889)
April	\$340,500	\$292,698	\$341,042	\$3,502,948	\$3,764,802	\$4,200,379	(261,854)	(697,431)
May	\$385,525	\$394,500	\$461,500	\$3,888,473	\$4,159,302	\$4,661,879	(270,829)	(773,406)
June	\$261,782	\$477,624	\$208,416	\$4,150,255	\$4,636,926	\$4,870,295	(486,671)	(720,040)
Year To Da	nto Totale			\$4,150,255	\$4,636,926	\$4,870,295	-\$486,671	-\$720,040
	Budget for Year			\$4,650,000	\$5,330,000	\$5,300,000	-ψ-00,071	-ψ1 20,040
Percent of	•			89%	87%	92%		
	increase(decreas	e)					-10%	-15%







CITY COUNCIL STAFF REPORT MEETING DATE: JULY 28, 2004

Agenda Item # 4
Prepared and Submitted By:

Mayor

AGREEMENTS WITH SPECIAL COUNSEL

RECOMMENDED ACTION(S):

- 1. Approve three agreements with special counsel, and
- 2. Authorize Mayor Kennedy to execute them.

EXECUTIVE SUMMARY:

The attached contracts with the firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP are recommended to provide legal representation on specialized matters for which the City Attorney may have a conflict. The contracts provide for services relating to the surveillance of the City Manager, personnel issues, and other matters that might arise. The contracts have been approved as to form by Bill McClure.

FISCAL IMPACT:

The authorized aggregate amount of the three contracts is \$100,000, if necessary. Funds are budgeted in the legal services budget (010-42230-1500).



CITY COUNCIL STAFF REPORT MEETING DATE: July 28, 2004

VOTING DELEGATE FOR 2004 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE

Agenda Item # 5
Prepared By:
Council Services &
Records Manager/City Clerk
Submitted By:

City Manager

RECOMMENDED ACTIONS:

- 1. <u>Approve</u> appointment of Mayor Kennedy as the City's Voting Delegate and Mayor Pro Tempore Sellers as the Alternate Voting Delegate to the League of California Cities' Annual Conference; and
- 2. <u>Direct</u> the City Clerk to Complete the Voting Delegate Form and <u>Forward</u> said form to the League of California Cities.

EXECUTIVE SUMMARY:

The League of California Cities will be holding its Annual Conference Friday, September 17 through Sunday, September 19, 2004 in Long Beach. At the Annual Conference, the League conducts its Annual Business Meeting where League Members take action on conference resolutions. These resolutions help guide cities and the League in its efforts to improve the quality, responsiveness and vitality of local government in California. The League's bylaws stipulate that each city is entitled to one vote on matters affecting municipal or League policy. The Annual Business meeting is scheduled for Sunday, September 19 at 10:15 a.m. at the Long Beach Convention Center. The memorandum from the League of California Cities requesting the Designation of a Voting Delegate for the League's Annual Conference is attached to the staff report.

It has been the City Council's past practice to appoint the Mayor as the primary voting delegate and the Mayor Pro Tempore as the alternate voting delegate. Therefore, Mayor Kennedy is recommending that he be assigned the responsibility of being the City's Voting Delegate and that Mayor Pro Tempore Sellers be appointed to serve as the alternate voting delegate to the League's Annual Conference. However, he states his willing to entertain a motion to have another Council member appointed as the primary voting delegate if there is such an interest. He further recommends that staff be directed to submit the Council's appointments to the League of California Cities.

FISCAL IMPACT: No fiscal impact.



CITY COUNCIL STAFF REPORT MEETING DATE: July 28, 2004

ACCEPT MONTEREY ROAD/UPRR UNDERCROSSING PEDESTRIAN AND BIKEWAY IMPROVEMENT PROJECT

Prepared By:

Agenda Item # 6

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

RECOMMENDED ACTION(S):

- 1. Accept as complete the Monterey Road/UPRR Undercrossing Pedestrian and Bikeway Improvement Project in the final amount of \$546,060.
- 2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY: The contract for the Monterey Road/UPRR Undercrossing Pedestrian and Bikeway Improvement Project was awarded to Granite Construction Co., by the City Council at their July 16, 2003, meeting in the amount of \$531,531. The project resulted in a Class 1 stripped bikeway, a new sidewalk and retaining wall on the easterly side of Monterey Road to allow for safe pedestrian access and storm drain improvements.

The work has been completed in accordance with the plans and specifications.

FISCAL IMPACT: This project is budgeted in the current year Capital Improvements Program budget under Project No. 528001. The allocated project construction cost including a 5% contingency was \$558,150. The contract was awarded in the amount of \$531,531 and the final contract price is \$546,060.

Approximately \$320,000 will be reimbursed to the City for the construction of this project via two State grants. \$78,000 has been used for storm drain upgrades from CIP Project No. 415097. The remainder of approximately \$148,000 was funded with Traffic Impact Fees.

Record at the request of and when recorded mail to:

CITY OF MORGAN HILL CITY CLERK 17555 Peak Avenue Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION CITY OF MORGAN HILL

Monterey Road/UPRR Undercrossing Pedestrian and Bikeway Improvement Project

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 28th day of July, 2004, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to Granite Construction Co., on July 16, 2003, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on July 15, 2004, accepted by the City Council on July 28, 2004, and that the name of the surety on the contractor's bond for labor and materials on said project is Federal Insurance Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and a	address of Owner: City of Mo 17555 Peak Aven Morgan Hill, Cali	ue
Dated:	, 20	
		Jim Ashcraft, Director of Public Works
	I certify under penalty of p	perjury that the foregoing is true and correct.

Irma Torrez, City Clerk City of Morgan Hill, CA Date:



CITY COUNCIL STAFF REPORT MEETING DATE: JULY 28, 2004

ACCEPTANCE OF THE CITY OF MORGAN HILL POLICE FACILITY PROJECT

RECOMMENDED ACTION(S):

- 1. Accept as complete the Morgan Hill Police Facility Project in the final amount of \$1,813,000.
- 2. Direct the City Clerk to file a Notice of Completion with the County Recorder's office.
- 3. Authorize the City Manager to negotiate, prepare and execute an amendment to the agreement with The Nicholson Company to provide additional construction management services in an amount not to exceed \$40,000.

Agenda Item # 7
Prepared By:
Sr. Project Manager
Approved By:
BAHS Director
Submitted By:

City Manager

EXECUTIVE SUMMARY:

The contract for the Morgan Hill Police Facility Project was awarded to Stevelle Construction Co. Inc. by the City Council at their December 17, 2003, meeting in the amount of \$1,699,000 with a Change Order Contingency in the amount of \$114,000 for a total project cost of \$1,813,000. The project has resulted in construction of the tenant improvements needed to convert an industrial building into the City of Morgan Hill's New Police Facility. The costs of the tenant improvements were guaranteed by the Nicholson Company per the purchase agreement for the building.

Twenty nine contract change orders were issued for a net deduct of (\$41,934) during construction of the project. The final contract amount with Stevelle Construction Co. Inc. was \$1,657,066. The project Change Order contingency and the savings from Change Orders were used to complete other work by separate vendors or sub-contractors directly with the Police Department, thus streamlining the procurement process. The change order contingency was always intended to be used for work completed by separate vendors.

The work has been completed in accordance with the plans and specifications with the exception of a couple of items the City will complete with the assistance of the Nicholson Company.

As the duration of construction took longer than anticipated, it is necessary to extend the Construction Management Agreement with The Nicholson Company to close out the project. The additional services necessary total \$ 40,000. This first amendment would increase the total amount of their services to \$310,000.

FISCAL IMPACT:

This project at award of contract had a total budget (including design) of \$2,213,000. The original project was funded with Police Impact Fees and the sale of the Library land to the Agency. The acceptance of the facility will trigger the provisions of the purchase agreement to acquire the building within 30 days. Bond proceeds will pay for the building acquisition and pay for up to \$200,000 in project costs including the additional \$40,000 for construction management services.

Submitted for Approval: July 28, 2004

CITY OF MORGAN HILL CITY COUNCIL SPECIAL MEETING MINUTES – JULY 14, 2004

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers, Tate and Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

CLOSED SESSIONS:

Mayor Kennedy announced the below listed closed session items.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Legal Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases:

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 6:02 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 7:45 p.m.

OTHER BUSINESS:

1. <u>COUNCIL SUBCOMMITTEE REPORT ON THE RESULTS OF THE INVESTIGATION INTO THE SURVEILLANCE OF THE CITY MANAGER</u> (Continued from 7/7/04).

Mayor Kennedy stated that since last week's Council meeting, he has received many e-mails, phone calls, and in person questions/comments about the subcommittee's investigation on the surveillance of City Manager Tewes. He said that several important points need to be made. He stated that the City

City of Morgan Hill City Council Special Meeting Minutes – July 14, 2004 Page - 2 -

Council and Mayor are elected to conduct the City's business and to ensure that basic services are provided such as police protection, fire/medical emergency response, water, sewer, street, traffic control, and administration. He indicated that the Council hires two city employees directly: the City Manager and the City Attorney. He said that it is the Council's responsibility to ensure that they and all City employees are provided with a safe and healthy work environment, free from harassment. When a City employee, in this case the City Manager, raises a concern about actions that threaten his safety and well being, it is the Council's responsibility to act. He stated that the Council could not ignore his plea for help. Therefore, the Council appointed a subcommittee of Council Members Carr and Sellers to initiate an investigation on the surveillance of Mr. Tewes. He indicated that this was not about politics, religion, or race; it is about ensuring that City employees have a working environment that is healthy, safe and free from harassment or intimidation. Thus, the reason the subcommittee was tasked to conduct the investigation.

Mayor Kennedy indicated that the Council just came from closed session. Before getting into the subcommittee's report, he reported that with respect to the Council Member Chang issue, no further action will be taken on this matter. It was his belief that Council Member Chang would be making a statement.

Council Member Chang stated that she knew about Mr. Tichinin's plan to place City Manager Tewes under surveillance before the plan was carried out. She knew that placing City Manager Tewes under surveillance was improper. She said that she tried to talk Mr. Tichinin out of moving forward with his plan. Obviously, she was unsuccessful. She stated that when she learned that the surveillance plan had been carried, she should have immediately shared with City Manager Tewes and the City Council what she knew about Mr. Tichinin's responsibility for the surveillance. She did not do so because it was her honest belief that the attorney-client privilege prevented her from doing so. Therefore, she stood silent while the City Council hired a private investigator to find out who was behind the surveillance and that she concurred that an investigator should be hired. She stated that she misled her colleagues on the City Council about what she knew concerning the surveillance. She now apologizes to her colleguages for this. She indicated that she is deeply committed to this City and that she does not approve of Mr. Tichinin's action or the action of anyone else who chooses to pursue their business with the City as pure sabotage. She stated that she is deeply sorry for the expense the event has cost the City taxpayers. She is also sorry for the disturbance and discomfort that this has caused the City Manager. She apologized to the individuals involved about the entire event. She stated that she did not cause the event but that she had knowledge about the event. She said that it has caused heartburn, time, expense and harmed individual's good names. It was her hope that after tonight, everyone can still work together, placing this matter behind, and still be able to take care of City business.

Mayor Kennedy stated that the Council has a supplemental report from the subcommittee. He indicated that the Council received a 32 page written submission/response made on Mr. Tichinin's behalf. He noted that the 32 page submission does not contradict any of the information that the Council has been provided thus far. Instead of denying the information and inferences set forth in the subcommittee's first report, the Tichinin submission mainly makes legal arguments that the Council should not take any action against him. He noted that to date, the subcommittee has not received any evidence that City Manager Tewes and City Attorney Leichter have had a sexual relationship or any relationship that has adversely affected the performance of their duties. He noted that a request was made at the last Council meeting that campaign contributions be made public. He indicated that the reports have been produced

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and have been filed with the City Clerk. If anyone would like to look at the reports, they are available upon request. He said that the above is the bulk of the new information contained in the supplemental subcommittee report.

Stephen Fink, representing Mr. Tichinin, expressed sorrow to see everyone here in this battle. He referred to his letter dated July 13, 2004 addressed to Mr. Wolfe. He inquired whether Mayor Kennedy has seen this letter and requested that this letter be entered into the record.

Marguerite Leoni, special counsel, indicated that the letter dated July 13, 2004 addressed to Mr. Wolfe has been received by the Council and that it will be made a part of the record.

Mr. Fink inquired whether his 30 page letter dated July 12, 2004, has been received and whether it will be entered into the record.

Ms. Leoni stated that the July 12, 2004 letter has also been received by the City Council.

Mr. Fink stated that he received the report/indictment of the City Council's subcommittee on Friday, July 2, advising his client that he had to respond in writing by July 6. He noted that on July 6 his office was closed. He indicated that the subcommittee's report went out to the public on July 2. He felt that Mr. Tichinin should have been given access to the document beforehand. He noted that his letter of July 13, 2004 states that the procedure used by the Council violates due process principals set forth in Nightlife Partners versus City of Beverly Hills. In this case, the judge, the jury and the prosecutor were all one entity. He did not know the scope of the inquiry. It was his belief that at first it was an accusation in the report ranging from anything; including that Ms. Leichter was told the truth by Mr. Tichinin. Therefore, he should be reported to the bar, the matter sent to the district attorney, that he be condemned and/or removed from a committee, etc. He stated that he than received an e-mail from Mr. Wolfe stating that he misapprehended the nature of the action and that the matter just concerned whether or not City Manager Tewes was surveiled and whether or not Mr. Tichinin lied to Mayor Pro Tempore Sellers. He said that when he prepared the July 12 submission, he did not have time to go over all of the factual allegations in the report. It was his understanding that the Council had four months to conduct the investigation and prepare the report. He did not believe that anything has been done that was wrong. He said that he will assume that everything in the report has been placed on the table and that Mr. Tichinin's greatest sin was that he hired a private investigator. The Council contemplated litigation because Mr. Tichinin did not tell the truth to Council Member Sellers. He said that Mr. Tichinin threatened the Council/City with a lawsuit. He referred to Article 1, section 1 of the Constitution of the United State and Article 1, Section 3 of the State of California's constitution. He indicated that both give an individual a right of petition and free speech.

Mr. Fink said that whether or not it is unpleasant to investigate City Manager Tewes, no law was broken. He referred to the State of California, Code of Civil Procedures, Section 128.7 that states "do your homework." In order to do your homework, you hire an investigator. He stated that the proposition, set forth in detail in his document, is one that lawyers do, are supposed to do, and that it is the profession. He indicated that Mr. Bell is a licensed private investigator who was in charge of the investigation. He informed the Council that he has not been given sufficient time to dispute the items. He said that lawyers are supposed to uncover/look into the facts. It was his belief that the Council wants to punish Mr. Tichinin for looking into the facts. If the Council wants to punish Mr. Tichinin for what he

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stated to Council Member Sellers, that is one thing, but felt that the rest of the activities were constitutionally protected. He stated that it is illegal for the City to undertake these proceedings. He reiterated that it is not illegal to investigate for a case because it is required. He noted that everyone seems to be of the opinion that it is a matter of public concern that the City Manager and City Attorney are having a sexual relationship. He said that he heard Mr. Tichinin's ex-wife, a superior court judge, opine on this and that it was his belief that she was wrong. He also heard from his old friend from Berkeley who wrote a column in the local paper, Mr. Tichinin's ex partner, Mr. Mitchell, opine on this matter as well and felt that he was wrong as well. The law states that whether or not such a relationship takes place, creates a potential conflict of interest. He referred to the Business and Profession Code section, the State Bar, the Ninth Circuit, Tenth Circuit, and the other cases he has cited in his brief.

Mr. Fink felt that this was in the nature of a quasi judicial proceeding in that the Council intends to punish Mr. Tichinin by taking away a particular benefit as a volunteer serving on a committee. He requested that he be presented with evidence and documents. He said that he has been informed that this information will be presented a couple of days following this hearing. He felt that the principals set forth are such that you provide an individual with evidence and then try them; not afterwards. He said that he has heard a lot about the nature of this investigation. He indicated that he spoke to Mr. Carey and that he did not believe that he was the thug that he is being portrayed to be in the report. Mr. Carey has stated that the things listed in the report did no occur, taking umbrage at the fact that he has been called a thug and a few other things as well. According to the report, a terrible investigation takes place for which Mr. Tichinin should be punished. It was his belief that the report submitted by the Council subcommittee is terrible investigation and that it is full of innuendos, possibilities and guessing; a report submitted to the public. He stated that his client hired an investigator who got caught. The Council made this information public, noting that Mr. Tichinin did not take this information to the public. He requested a hearing before any action is taken. A hearing will afford him the ability to confront witnesses, look at documents, and deal with the rest of the issues. He said that Mr. Tichinin was wrong in what he told Mayor Pro Tempore Sellers but that his actions were not illegal or wrong. He felt that it would be illegal for the Council to punish Mr. Tichinin.

Bruce Tichinin pointed out that the subcommittee report prepared by Council Members Carr and Sellers was intended as the equivalent to an indictment with the suggestion that he be punished. He said that this Council proposes to sit as a bank of judges to the equivalence of an indictment. He stated that the office of prosecutors is entirely separate from the office of judges. He said that the fundamental precepts of fairness called due process of law require this separation in order to give a fair trial to the person accused. By issuing the equivalence of an indictment against him and taking the role of prosecutors against him, Council Members Carr and Sellers have elected the role of prosecutors. He did not deny their right to do so to the extent that it is lawful. However, he felt that the subcommittee and the Council. if it has any continued intention of being fair to him in this matter, should recognize the conflict between the roles that they have already played, which shows that they have already concluded that he should be punished. Now, they plan to sit as judges on the equivalent of the indictment issued against him. He requested that Council Member Carr and Sellers consider this fact if they have any desire to give him the fairness the Constitution guarantees. He indicated that the provisions of due process require that Council Members Carr and Sellers step down from the dias and not act as his judges. It was his belief that the Council was now sitting to make a determination on what to do in response to the subcommittee report. He inquired whether the Council plans to take action on the recommendation or make a decision on

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what action to take/not take in response to the recommendations contained in the subcommittee's report. If so, the Council would be sitting as decision makers on the subcommittee report.

Ms. Leoni indicated that it is not her belief that the Mayor is required to be cross examined under the public comment section. However, if the Mayor wishes to direct a question to staff, it would be appropriate to do so. She stated that at this point of the meeting, it is a time for the public to present/address the Council.

Mr. Tichinin inquired whether it was the opinion of special counsel that his due process rights would be preserved if Council Members Carr and Sellers who are suggesting punishment against him, be allowed to sit and determine which punishment should be dished out.

Mayor Kennedy recommended that the Council hear all of Mr. Tichinin's questions and then respond to them.

Mr. Tichinin requested that the record reflect that he requested Council Members Carr and Sellers disqualify themselves. He stated that he was ashamed that he did not tell his long time friend Greg Sellers the truth and has since told him the truth. He was also ashamed that he did not tell it to him as Council Member Sellers was acting in his role on behalf of the Council. He apologized to everyone for this. He was glad that he corrected it quickly, only six days after he made it and before any harm was done. He said that there is no statement anywhere by anyone, no claim to this point, that any harm was suffered by anyone as a result of the misrepresentation. Any claim from this point forward that some was, he felt would suffer from a lack of credibility. He noted that the subcommittee had seven weeks to prepare its report and that he was sure that the subcommittee did its best. He stated that the reason he made the misrepresentation was due to the fact that he was caught. He said that he feared that giving an answer would tend to compromise the confidentiality of the investigation, and the confidentiality of his client. He also feared that if he told the truth that the City would retaliate against him and his client. In response to his acknowledgment that he conducted that surveillance, the subcommittee has issued a report that suggests, without citing any law, that the subcommittee believes he has broken the penal code, that he be criminally prosecuted. The report also suggests that it be recommended that the State Bar take disciplinary action(s) against his license to practice law without suggesting what provision of the rules contained in the professional conducts for attorneys he has violated. The report further suggests that he be removed from his position on the urban limit line/greenbelt committee of the City without making any suggestion that anyone has ever stated that he has performed incompetently in that role. The report also suggests that he be publicly condemned by the body that is the highest legal authority in the City. He felt that his fears of retaliation were justified.

Mr. Tichinin addressed the reason for the surveillance. He indicated that he was both a partner and attorney for the Vierra project; a proposal to place five homes at the base of El Toro before the slope starts which will be completely out of the public's view of the scenic peak. He indicated that he helped to protect El Toro many years ago as the attorney for the lawsuit that prevented development on the scenic portions of the peak. The response of City staff to the application for this project was to find that it was inconsistent with Measure P and should be denied and not processed because of the inconsistency. He stated that the basis cited for the inconsistency claimed that the line on the General Plan map, demarcated between land that is developable as residential and land to be preserved as open space. As drawn on the General Plan map, it showed that the application would perform some development in the

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open space zone. He noted that planning staff informed the Council that the line did not accurately drawn on the map. The determination made a long time ago by this Council was such that the demarcation line should be at the 500 foot contour line. The City Planner informed the Council that when staff placed the line on the General Plan, it was unable to do so accurately based on the technology available at the time. The General Plan map showed land in open space that was below the 500 foot contour line. He felt that it was undisputed that if planning staff had accurately rendered the 500 foot contour line called out by the Council on the map, the Vierra project would be perfectly legal and fall within the developable land. He indicated that he filed an appeal of staff's position that the project was inconsistent with Measure P and that development would not occur in the open space. He briefed the question and pointed out all of the authorities that state where there is a difference between the intention of the legislature and what is done to carry out this intention; you follow the intention even if it is inconsistent with something that is literal in the subsequent line such as the map line. Having filed the appeal, he called the City Attorney to ascertain whether she had read his appeal and to ask what her advice would be to the Council when the appeal is scheduled for hearing. He indicated that the City Attorney stated that she would advise the Council that the appeal would be a reasonable position. Not long thereafter, the City Manger called a meeting, inviting Mr. Vierra and he to be present to which he brought the City Attorney and planning staff. He said that at this meeting, it became apparent that the position of the City Manager, City Attorney and staff was going to be in opposition to the project. When the appeal was considered by the Council, the Council turned to the City Attorney for her advice. Instead of stating that his position was reasonable, as she indicated she would do before the City Manager called the meeting, she told the Council that the law prohibits their position, although it seemed to him that the Council was inclined to agree with him. Without this changed advice, it was his belief that the Council would have decided in his favor. Instead, the Council followed the City Attorney's advice and recommended that he and his client obtain a judgment from the superior court that his position was correct before it would grant full approval of the project.

Mr. Tichinin indicated that he tried to determine the source of the switch in the City Attorney's position. He was aware that he had represented Bob Lynch Ford against the City Manager's proposal for a Ford Store in Morgan Hill and that this project was his signature accomplishment to date in his administration. He feared that the City Manager had called the meeting as part of a scheme of retaliation against him for having appeared before the Council in opposition to this project. Thereafter, he exercised his client's right to petition for readdress for grievances by suing to set aside what he conscientiously perceived to be the many violations of law involved in its approval. He knew that it was widely perceived within the community, and had been for some time, that there had been an affair between the City Manager and the City Attorney. He read into the record the following: "As part of the checks and balance between centers of power in the democratic system of government, it is expected that the offices of the City Manager and the City Attorney will advise the City Council and the other departments of City government independently and objectively. If the relationship widely believed to exist did exist, it obviously is one which has the potential to pervasively eliminate this objectivity and independence between these two powerful offices. Such a relationship is a matter of real public concern to the City on all issues which require the advice and counsel of both the City Manager and the City Attorney. Just as most people would not feel comfortable with the appearance of conflicts of interest that would be created if a city manager and a city attorney were married to each other, if they are conducting an affair, the same kind of probable conflicts of interest and destruction of independence would occur. He believed that if he could show you (Council) evidence that this relationship existed, that he would be willing to reconsider whether or not it had been advised independently and objectively

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by the City Attorney when he showed that she had changed her advice and that the Council would be willing to grant a rehearing with someone else advising it. Hence, he fulfilled his duty to investigate that possibility. As his attorney has pointed out, he chose a licensed investigator, a former lieutenant of the San Jose Police Department, Mark Bell, a man known to some of the Council members. Mr. Bell, as is legal, subcontracted the job out to Mr. Carey who is currently in the process of fulfilling the requirement to take a private license investigator test while obtaining 6,000 hours of experience in investigation."

Mr. Tichinin referred to the false account of the meeting contained in the subcommittee report. He noted that the subcommittee refers to a meeting between the City Manager, the City Attorney, Mr. Vierra and himself. Mr. Vierra set up the meeting with the City Attorney and that he asked for her sole presence at the meeting because it only involved a legal question. On her initiative, she brought the City Manager. At the meeting Mr. Vierra pointed out that the City Council had set the demarcation line between the open space and developable land at the base of El Toro at 500 feet. Following fully noticed public hearings, with the opportunity for all interested parties to give their input; the Council made its decision and said that it would be the 500 foot contour line. He pointed out that it was undisputed because the City planner had said that this was the case. The line was thereafter inaccurately placed on the General Plan map. He pointed out that it was that inaccurate placement that was the basis for the denial of the project as recommended by the City Attorney. Mr. Vierra did not ask "what would take to get you on my side." He inquired as to the impediments to correcting the mistake. He suggested that that another hearing be held with all of the required public notices being given to consider whether or not the line, now that it is possible to technically draw the line accurately, should be placed where the Council always intended it to be. He indicated that neither he nor Mr. Vierra received a positive response to this question. At this point, he stated that it was his belief that the reason that the City Attorney recommended that the mistaken line be given the force of law was a part of the retaliation that the City Manager is trying to work against him for the Bob Lynch Ford matter and felt that this is retaliation for the exercise of constitutional rights. He felt that this is a violation of the federal civil rights act 42 USC, Section 1983. He indicated that the City Attorney immediately inquired whether he was threatening a retaliation suit. Mr. Vierra stated that he did not want to proceed with a suit; he just wanted the mistake to be corrected.

Mr. Tichinin stated that he would rely on what his attorney has submitted in his letter and what he stated this evening as being the balance of his presentation. He stated that he has a position on the recommendation that he be removed from the urban limit line/greenbelt committee. He said that the distraction of this matter has prevented him from presenting to the landowners, who are interested, and the greenbelt committee an original idea of preserving open space in Morgan Hill. It was his belief that his idea will thoroughly compensate all land owners for such rights that they give in preserving open space. It will preserve the open space in perpetuity rather than just as long as there is a green city council and will do so at no or minimal burden to the taxpayers. It was his hope that the Council would not further cripple his ability to present this proposal by removing him from the committee. He noted that no one has suggested that he has performed incompetently on this committee.

Mayor Kennedy opened the floor to public comment.

Barbara Sullivan stated that as someone who has had the opportunity to deal with all of the major players in this matter, she felt that it was the responsibility of any public entity, including the City to protect its employees. When a public servant is followed, harassed, or intimidated in the course of doing

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business, the City has a morale obligation to spend the money that it takes to proactively deal with the issue. She noted that the final report appears to be a fair representation of the situation. As distasteful as this job was, she felt that Council Members Carr and Sellers were thorough and unbiased in their investigation and report. She applauded the City of Morgan Hill for spending the citizen's money in this way. She noted that the Morgan Hill Times ran a poll on their website asking whether it was illegal to have a private investigator follow a city official. She did not believe that this was the central question but that it is whether it was ethical to intimidate and coerce public officials to get personal concessions. When dealing with those who work in the public realm like city staff, she maintained that any kind of harassment, intimidation, and blackmail may not always be illegal but that it is certainly unethical. She stated that a reason for resigning from the planning commission was attributable to her own fear and frustration. She noted that citizens and developers were denied rezoning or building permits and would vent their anger at the Planning Commission and staff. As a volunteer, she could guite when it got bad, however, she always felt bad for City staff who had to deal with the harassment from lawyers, developers and residents as a normal course of doing their job. She said that in the end, the whole sorted affair was not about sex, but was about greed of a lawyer and developer. She said that on the scale of public interaction, the minimum requirement is to act legally. Even if actions reveled in this investigation are later deemed to be legal, she felt that they were unethical. In a town this size, she expects everyone to behave ethically. She expects everyone to be polite, less vindictive and more understanding of the constraints that cause us to work together on a solution. She expects individuals to be honest, fair and decent to each other. She indicated that she was threatened with a personal law suit as a Planning Commission and that it was her belief that there would be more threats of law suits in the future. She felt that the only hope the City has to redeem itself is to uncover the truth of the situation and loudly proclaim its outrage. Otherwise, citizens will become silent accomplices into the deterioration of public decency.

Alex Kennett thanked the Council for its first action as it was his belief that the City was well served by said action. He felt that the Council arrived at the conclusion that he would have asked. He said that public figures who are elected understand the ramifications of perception as it comes with the territory. He stated that public figures who are hired or appointed do not have the advantage of having to run a campaign and keeping the public's view of what is done in proper perspective. If there is a misconstrued opinion of what has been done, it is paramount to correct it. He stated that he has been hearing about the alleged affair for approximately three years. He said that it should not matter whether there was an affair or not, the subjects did nothing to change the perceptions of others. He understands that the Council is doing what is right for the City and requested that it continues to do so. He stated that he would prefer that the Council arrange some form of mediation that would take into account the big picture of what is truly best for Morgan Hill rather than a decision made too quickly that will be questioned forever and whose ramifications will draw this issue out for months or years, costing the City even more money and the subjects involved even more pain.

Frances Wang, a 25-year Gilroy resident, stated that she was not interested in politics. However, she is in attendance for her long time friend Council Member Chang. It was her strong belief that she was treated unfairly by the investigation. She felt that Council Member Chang is an intelligent, honest, and hard working individual. She felt that Morgan Hill should be proud to have her serving the community.

Susan Phen, Asians for a Better Community Committees, indicated that the Committee is concerned about today's outcome. She requested that the Council treat the Committee fairly and equally.

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No further comments were offered.

Ms. Leoni stated that she is the advisor on this particular matter; special counsel to the City Council. She stated that she has examined the legal issues raised and that it was her belief that the Council can proceed. She can advice the Council in closed session if it has additional questions.

Mayor Pro Tempore Sellers said that there were questions made about the "recommendations" contained in the subcommittee report. He indicated that it was his understanding that this was a list of items that the Council should give consideration to. He said that there may be other items that could be added to the list in order to make a complete list as possible. It was his understanding that the items listed are not recommendations.

Ms. Leoni stated that she has read the subcommittee's report and that the items are presented as options; they are not recommendations and that they are not presented in that fashion.

Council Member clarified that Council Members Carr and Sellers are a subcommittee of the Council, they are acting for the Council and that they reported back every step of the way of what they were doing; how they were preparing the report and what would be included in the report. He said that he not only endorsed and appreciated everything the subcommittee did; he took full responsibility for their work. He requested that citizens give credit to the subcommittee for their hard work and that if there is to be criticism, it was the Council that sanctioned the investigation. He did not believe that it was fair to single out the subcommittee when they were the ones who undertook all of the work, shouldering all of the responsibility, making sure that the entire Council was on board the entire way. He noted that the Mayor made comments early on and that he seconded his comments. He said that harassment of an employee cannot be ignored as it is wrong. He said that the Council/City cannot allow its employees to be harassed. He said that it is his goal to find out the facts. He noted that the City had an employee who was harassed and that the Council wants to protect its employees from this kind of a situation. If it is surveillance or stalking that causes harassment or rumors/innuendoes that are causing this harassment, the Council needs to figure out what the facts are and figure out how to prevent recurrences. He felt that it was a tragedy that the City had to spend this amount of money on the investigation, noting that there are ongoing costs for what is taking place this evening. He said that the Council will have a lot more expenses than the \$50,000 for the investigation. He said that the Council would like to minimize any costs to the City and move as expeditiously as possible and complete the matter at hand. He stated that he does not want to punish anyone as he does not see a point to this. When you start paying lawyers to analyze 32 pages of whether the matter was legal or not, it is not worth pursuing. It was his belief that it is a goal of the Council not to punish individuals or determine the legalities, but to get this matter behind, minimizing expenses while making sure that this does not happen again.

Mayor Kennedy noted that Mr. Fink stated that the private investigator was Mark Bell, a licensed investigator. He inquired as to the relevance of this fact on this issue.

Ms. Leoni responded that the relevance is that the law requires persons authorized to conduct certain activities, such as investigations, to be licensed and be regulated by the California Business and Professions Code. She stated that it is illegal to engage in these activities if you are not licensed. She said that there is an exception for an attorney. However, in this case, she is aware that Mr. Carey was not

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licensed and that he is not an attorney. Therefore, as a general matter, she stated that it would be illegal for Mr. Carey to carry out the activities that he did, assuming that he is not licensed and acting independently.

Council Member Carr stated that he is not an attorney, he did not investigate the legality of these issues, and that he did not draft an indictment. He noted that he was asked to step down on this issue, stating that he will not step down on this issue and will carry out his responsibilities as a City Council Member. He stated that this is an important issue to him and that he would continue to carry out this issue. He felt that the Council has been more than fair to all involved in the process. He said that the Council has offered far more respect than has been given to this Council in this process. He stated that he was disappointed that Mr. Tichinin continues to make unsubstantiated claims against the City Manager and the City Attorney without any evidence to support the rumor. He was further disappointed that anyone would stand at the podium and suggests that the victims of a vicious rumor are the ones to be blamed. He indicated that he has known Mr. Tichinin for many years. In his 2000 Council election, Mr. Tichinin donated to his campaign. In his role as a subcommittee member overseeing this investigation on behalf of the City Council, he has taken no joy in the information the subcommittee has uncovered. He said that some individuals may suggest that his involvement is politically motivated, and stated that he rejects this claim. He noted that all five Council members agreed to appoint a subcommittee to oversee the investigation and all five agreed to the members of the subcommittee consisting of him and Mayor Pro Tempore Sellers. It was his hope that the report presented by the subcommittee and the conclusion he will reach this evening concerning Mr. Tichinin's action sends a message that business is not conducted in this manner in Morgan Hill. As a Council Member, beholding the public's trust, he cannot and will not tolerate this type of behavior, even if it is by someone who has supported him. He did not believe that good government can function if individuals are attempting to intimidate or inappropriately influence elected/appointed officials and staff members. It was his belief that it was his responsibility, as a council member, to make sure that anyone who does so, regardless of who they are, who they know, how popular or powerful they may be, are held accountable for their actions. He said that he was sorry to see prominent members of the community act in this way and commit these offenses. He is saddened that this has happened and that these individuals decided to do the wrong thing. However, sometimes people you thought were good do bad things. When they do, it was his belief that they have to pay the consequences.

Council Member Carr offered his sincere apologies to the City Manager and the City Attorney for what has happened to them personally and for the anguish that they and their families have gone through as a result of actions. He felt that these actions were the old style of politics in Morgan Hill. Rumors, innuendoes, backroom deals, and influence peddling are not the way citizens expect to be handled in Morgan Hill. He stated that barbershop rumors do not substitute for open public dialogue and honest policy discussions. He felt that these tactics should be rejected and labeled as unacceptable in Morgan Hill politics. He said that as Council Members, they are stewards of the community's vision and image. Council Members are held accountable for the environment it creates and the conditions in which it leads City government and the community. He noted that many have asked why make the report public. He said that it was made public to once and for all put an end to the awful rumors that have been spread. He felt that the public needs to know who did this in case it happens again. The public will know and have made a judgment on how best to handle the situation. He felt that the Council has to provide the opportunity for the community to develop its own standards. He reiterated that he is not an attorney and

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felt that what took place was wrong. He stated that the legalities of the actions are to be decided by others and not the Council.

Mayor Pro Tempore Sellers said that it has been difficult for everyone. The subcommittee did its best to make sure that it was unbiased in its presentation. He stated that it was a goal to provide information/facts to the Council and ultimately to the community. He stated that he would not be stepping down on this item because it is clear to him that he was acting in his role as a council member. As a council member, it is his duty to step up and do the hard work needed, making a determination to be considered this evening. He noted that he asked special counsel about the recommendation. He clarified that the subcommittee stated a list of options. It was the subcommittee's goal that if the Council was to be considering any possible action, everyone in the community and those involved should be given ample opportunity to think about what actions might be taken. He clarified that the subcommittee did not place the list of items to be considered in any order nor state the actions that the Council should take.

Mayor Pro Tempore Sellers noted that it has been clearly stated that all Council members agreed to proceed with the investigation. All Council members concurred and understood that the City would be incurring costs throughout the investigation. He indicated that Council Member Carr and he presented updates to Council Members at every opportunity, even if there was not much to report. There were some weeks where the subcommittee did not believe it would get anywhere with the investigation but still reported to the Council. He stated that all council members knew what the subcommittee was doing, understanding that it had an obligation to its employees to investigate the threat as any other employer would. The Council had an obligation to find out what happened and to take the appropriate action, depending on what the Council found. If the Council failed to investigate and performed its duties as employers, it would have cost the City much more in legal costs. Individuals have questioned why the Council had to bring this mess before the public. Some individuals have stated that the Council should have come forward earlier while others state the Council should not have brought this matter out at all. He said that the Council has relied on legal counsel throughout the process. There were times that the Council could not bring this matter before the public as advised by special counsel. The Council knew it had to bring this matter before the public, as ugly and unattractive as it was. He said that as difficult as it was to bring this matter forward, the Council is obligated to provide the information to the public. To do otherwise would be illegal and a dereliction of duty. It was his belief that every time a public entity attempts to hide its work from the public, it erodes the faith in government and undermines the foundations of democracy. Therefore, the Council was obliged to bring this matter to the community. He felt that by exposing this ugly mass to public scrutiny it would be the best way to take action and place this matter behind, moving forward with the important work of the City Council. He said that he was frustrated and upset that some members of the community have claimed that political motivation has led to some of the Council's activities. If he had been politically motivated, he would not have touched this matter with a ten foot pole. If he was politically motivated, he would have ignored the pleas of the Council's employees and swept this matter under the rug. If politically motivated, why would he have issued a report condemning one of his biggest supporters and a powerful politician as it would make no sense to do so. He said that the only potential fall out for him, politically, is negative. However, he would rather do the right thing and be condemned for it rather than do the politically action and achieve shallow success.

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Mayor Pro Tempore Sellers stated that he was disappointed in Mr. Tichinin as a friend and a community leader that he lied to him and that he undertook actions that embarrassed the town that they both care so much about. He indicated that Mr. Tichinin's objections brought to the subcommittee centered on the fact that he did not believe that he did anything illegal. He noted that the report does not state that Mr. Tichinin did anything illegal. Whether anything done was illegal or not was not for the Council to decide. However, it is clear to him that what Mr. Tichinin did was wrong. Spying on City employees to gain advantage for a project and lying to the Council is wrong. If the Council does not object to Mr. Tichinin's action, the Council is also wrong. He noted that Mayor Kennedy requested that each Council Member point out its ties to the individuals named in the report last week. While publicly condemning a friend and alley is difficult, it the Council cannot hold its friends to the highest standards, he did not know how the Council could demand this from anyone else. If the Council allows its friends to do what it knows to be wrong, how can the Council ask anyone else to do what is right?

Mayor Pro Tempore Sellers indicated that he considered Council Member Chang one of the most impressive politicians he has ever met. However, what she has done to this community cannot be minimized. He noted that she had opportunities to come forward and not withhold information. By misleading the Council, she has brought harm to the community. He stated that this has soured the reputation of the community and the Council. He indicated that more often than not they are both allies in the promotion of many of the community's most visionary projects, working closely together and doing great things for the community. He felt that it was important that the Council call each other on things when it is believed that someone has done something that is wrong. He stated that he could not shirk his responsibility as a Council Member because Council Member Chang is an astute politician, has been a political supporter, or because they are allies. If he had done what she had done, he would fully expect to be taken to task by his colleagues for doing so. He agreed with Council Member Chang that she did act wrongly and that it was important for everyone to state so. He stated that he appreciated that she stated her concurrence with the investigation and that there were times where she remained silent, indicating that this was frustrating.

Mayor Pro Tempore Sellers indicated that the Council has been considering a code of conduct/ethics for some period of time. He felt that it was imperative that the Council make this a top priority, that these documents be adopted, and that the Council adhere to the code of ethics/code of conduct once adopted. He indicated that one of the most frustrating things for him was hearing many of the larger news media who have come before the City and made reference to the City as being a "quant little town," a "cute little town", or a "Payton Place," stating: "what do you expect from a small little town like Morgan Hill." He stated that he grew up in this community as did his wife, indicating that they are raising their children here. He said that he expects a lot from this town, expecting citizens to conduct themselves in the highest, moral, and ethical standards. He further expects Morgan Hill to be a shining example for other larger communities. He expects the Council to be worthy of the people who live in this community. It was his belief that the Council has to state clearly for the record that the Council and the community do not condone, support and will not tolerate these kinds of actions.

Mayor Pro Tempore Sellers indicated that the subcommittee has laid out options before the Council, one being a resolution that clearly states the Council's views toward the actions undertaken by Mr. Tichinin. He recommended that the resolution be read into the record and that the Council consider its adoption this evening.

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Mayor Kennedy read into the record a resolution of the actions undertaken by Mr. Tichinin; condemning the surveillance, deploring his denial and requesting the immediate resignation of Mr. Tichinin from the Urban Limit Line Subcommittee.

Mayor Pro Tempore Sellers said that most of the resolution speaks directly to the subcommittee report and conclusions provided in the report. He said that it was characterized, in an early presentation, that City Manager Tewes had a signature project. He stated that he finds this statement intriguing because the City Manager serves at the will of the City Council. If there are signature projects, they are signature projects of the City Council. He said that the City Manager performs his duties on the behalf of the City Council and the City of Morgan Hill. He indicated that the subcommittee felt that it was vital that the community and the Council condemn the activities and make it clear to everyone involved that the Council finds them unwarranted, unjustified, and that it deplores the false statements. He requested that Mr. Tichinin consider resigning immediately from the Urban Limit Line subcommittee in light of all his actions.

Council Member Carr said that the importance of taking action on this issue this evening is such that the subcommittee has presented a report to the Council to base its actions upon. He indicated that this is an informational report and that by taking action this evening, it will be the first time the Council will have made a statement about these actions. He noted that it has been suggested that the Council delay its action. He recommended that the Council move forward, taking action this evening in order to begin the process of healing and begin the process of how the City will conduct business in Morgan Hill; letting the world know that the Council conducts business in an open format. These actions are not the way the Council conducts business in Morgan Hill.

Council Member Tate stated that was pleased that Mayor Kennedy read the resolution into the record as it made one reflect on what was heard this evening and gave individuals the opportunity to change its opinion about any one of the findings. He indicated that he was in accord with all the findings having reviewed them.

Action:

On a motion by Council Member Tate, and seconded by Council Member Carr, the City Council unanimously (5-0) <u>Adopted</u> Resolution No 5832, condemning the surveillance of Mr. Bruce Tichinin, deploring false statements made by him, and requesting his resignation from the Morgan Hill Urban Limit Line Subcommittee.

Mayor Pro Tempore Sellers noted that there were a few items raised in the report that the subcommittee believes may warrant further consideration by the subcommittee.

Ms. Leoni stated that the Council has decided to express its extreme outrage of the activities undertaken this evening. However, as the report reflects, there are outstanding items. It was her understanding that one of the options in the report is for the subcommittee to wind up its investigation of particular matters that may lead to the Council believing that additional actions may be necessary.

Mayor Kennedy indicated that one of the options discussed was referring some of these matters to the district attorney. He said that this is something that the Council may want to talk about. He indicated that he spoke with the district attorney yesterday on the matters before the Council. If the Council chooses to refer any issues to him, the district attorney will look into these matters and conduct an initial

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investigation, as deemed appropriate. The district attorney would decide whether it merits proceeding further

Ms. Leoni said that the non action item would be that the subcommittee completes its work.

Council Member Tate said that he would support the subcommittee finishing its work expeditiously. If it is one of those things that incremental progress is being made, if any, and the matter would be dragged out, he would assume dropping the investigation.

Mayor Pro Tempore Sellers said that the subcommittee would continue to make regular reports to the Council and continue to ask the Council as a whole what it believes would be the appropriate actions to take

Council Member Chang stated that this whole issue has been harmful to the entire community, Council members, City Manager, City Attorney and to the City of Morgan Hill. It was her hope that the individuals in the situation would be able to talk to each other. She understands that everyone believes that Mr. Tichinin did not do the right thing, but felt that he may be willing to talk to the Council. Mr. Tichinin can pay his dues, dropping the entire matter. She said that she is having a hard time sitting hear and listening to the entire matter. It was her hope that the subcommittee could talk to Mr. Tichinin in order to put an end to this issue.

Mayor Kennedy wanted to make sure that the word gets that the City of Morgan Hill will not tolerate intimidation or creating a hostile work environment for its employees. The actions taking by the Council have been serious actions. He felt that the Council has been as fair as possible.

Ms. Leoni reported that in closed session, the Council reached a resolution of the subcommittee report as to Council Member Chang.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 9:40 p.m.

IRMA TORREZ, CITY CLERK	

MINUTES RECORDED AND PREPARED BY:

Submitted for Approval: July 28, 2004

CITY OF MORGAN HILL JOINT SPECIAL AND REGULAR CITY COUNCIL, SPECIAL REDEVELOPMENT AGENCY, AND SPECIAL MORGAN HILL FINANCE AUTHORITY COMMISSION MEETING MINUTES – JULY 7, 2004

CALL TO ORDER

Mayor/Chairman/President Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency/Commission Members Carr, Sellers, Tate and

Mayor/Chairman/President Kennedy

Late: Council/Agency/Commission Member Chang (was not in attendance for closed session)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency/Commission Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

2.

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Name of Case: Hacienda Valley Mobile Estates v. City of Morgan Hill.

Case Number: United States Supreme Court 03-1571

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Case Name: Hacienda Valley Mobile Estates v. City of Morgan Hill Case Number: Santa Clara Superior Court, Case No. CV 807708

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

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ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman/President Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

Mayor Kennedy presented a Certificate of Recognition to retiring Library Commissioner Mary Ellen Salzano and thanked her for her years of service on the Library Commission.

PRESENTATIONS

Gordon Siebert, representing the American Public Works Association, South Bay Area Chapter, presented the Public Works Department and Director of Public Works Director Ashcraft the "Award of Merit" certificate for the Butterfield Boulevard Project - Phase IV.

CITY COUNCIL REPORT

Mayor Pro Tempore Sellers applauded everyone involved with the Independence Day Inc. organization for the wonderful Fourth of July activities. He indicated that he recently returned from vacation, visiting 15 states. He said that one of the things that Council members inevitably do in travels is to see how other communities solve problems or deal with issues. He stated that he had the opportunity to visit baseball complexes in Montgomery, Alabama and Tupelo, Mississippi; including aquatics complexes and recreation centers in Colorado and other parts of the county. He said that it is always helpful to get ideas on how other communities have deal with problems. He indicated that he is currently serving on the Downtown Association as the Council's liaison and that he is looking forward toward incorporating some of the ideas he picked up. He stated that he would be serving on the economic development subcommittee in the coming months and that he is looking forward to tying what he has learned to this subcommittee as well.

CITY COUNCIL SUBCOMMITTEE REPORT

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<u>CITY MANAGER REPORT</u>

City Manager Tewes reported on the testing of the City's water wells for the contaminate perchlorate. He reported that all of the active and off line wells have shown none detect levels of perchlorate in recent months. However, the Condit well that has been offline since February 2003, showed a 5 parts per billion reading in the most recent testing. This level is above the detection level but below the State mandated action level. He stated that the well is offline and will remain off line. All other wells in the City have reported none detect levels, below the level of detection established by State protocol.

CITY ATTORNEY REPORT

City Attorney Leichter indicated that she did not have a report to present this evening.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman/President Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Marby Lee stated that as a mother of a two-year old and a frequent user of the library, she has a fear of a library site in the downtown area due to traffic. She said that traffic in the downtown has been quite heavy the past couple of years to the point the City installed florescent yellow signs to help the cars notice individuals crossing the streets. Because of the number of small children that would be using the library, it sparked a sense of danger. She stated her support of a new library but not in the downtown. She felt that the civic center was a good site for a new library.

Andrew Poth said that he had an interesting experience on July 4 walking along Peak Avenue with Marie Lamb who was collecting signatures on a petition. Ms. Lamb would ask individuals what they felt about the library being moved to the downtown. A couple of individuals supported its move to the downtown, but that a great majority of individuals supported the library at the civic center location.

Gloria Subocz expressed concern for the elderly, those in the 60 and above age range who may find transportation a problem. She noted that the bus system provides transportation to the library and is easily accessible by the adjacent elementary school children. She stated that there is a strong feeling that the library should not be moved. She did not know why the issue of the site was raised. She suggested that the Council do what it can to leave the library at the civic center site. She indicated that it has already been determined that expansion of the library would cost far less than building a two-story library that would have no trees, ponds, benches or grass but would have traffic. She requested that the Council place the question of the preferred library site location on the November 2004 ballot and let the majority of the citizens decide.

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Nancy Barker stated that over the past weekend she spoke to over 200 individuals of all ages from all areas of Morgan Hill about the library. She said that more than 90% of these individuals favored the library location at the civic center site. She felt that the Council needs to look at what is best for the library and not what is the best for the downtown. If the Council does not want to leave the library at the civic center, she requested that the Council hold off on its decision and place the question on the ballot.

Marie Lamb stated that she had the opportunity to speak with three of the Council members today. She said that she is one of the individuals who is behind the library petition and coordinating its effort. She stated that individuals are signing a petition and entering into major discussions about the library's location. She stated that this is an extremely hot topic in the community. She said that the passions and emotions are running high and that logic supports the civic center site as the preferred site. She indicated that the vast majority of citizens are skeptical that a downtown library would truly help the community and the downtown. Citizens do not believe that a downtown location would significantly increase the sense of community. She felt that the idea of synergy is an illusion and that citizens do not buy the downtown myth. She said that the so called "library experts" might have a theory but that they do not necessarily apply to the City of Morgan Hill and its unique group of citizens in terms of the library. The most negative reaction to the petition has occurred near the Sunsweet downtown site. She stated that there is a strong sense that the civic center location is superior for meeting the needs of library users. It is a setting that is beautiful, serene, calm, would have more landscape grounds, room for an outdoor library patio and a garden that has a great view of El Toro. The civic center site has more room for expansion and there would not be a concern for parking identified with the downtown site. She stated that the downtown site is unacceptable no matter how much the Council tries to convince citizens that traffic congestion and parking would be mitigated. She felt that mitigating concerns would cost a tremendous amount of money. She said that library users are repeatingly stating that they would less likely use the library if moved to the downtown as they believe it would be an inconvenience. She requested that the Council select the civic center site as the site of preference on July 21.

JJ Vogel agreed that the library site location should be placed on the ballot. If the Council does not, he stated that he would help the civic center library proponents organize to place a citizen sponsored initiative on the ballot. He said that in light of items he has been researching and reading (e.g., problems with the golf course, library, etc.) and the lack of Council response to questions he has raised at every meeting he has attended, it is time for him to start a watch dog group, similar to the one he started in Hollister and possibly a website that will include information he uncovers. He said that he is here to help the Council and the City without charging taxpayers. He was here to carry out the work of the late Bev Freeman.

Mr. Hammerist felt that citizens and the City Council are on the same side, wanting to do what is best for Morgan Hill. He stated that the citizens want to give the Council's information a fair hearing. He did not believe that there was time to do so before the July 21 meeting date where the Council will take a vote on the library site selection. Should the Council hold a binding vote on July 21 on this matter, he said that citizens will consider this an adversarial action. He stated that citizens do not want to be in an adversarial situation with the Council, but want a fair hearing. He said that citizens want to know: 1) if information is unbiased; 2) where the information is coming from; 3) what is the interest to the source of information; 4) is the information complete/relevant; 5) has the appropriate criteria been applied,

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drawing conclusions from the information; and 6) whose values will the Council use to make judgments about the information. He said that the citizens want fairness in the process and need time. If the Council will be voting on July 21, he felt that citizens will need some recourse to counter the adversarial action. He said that the citizens want the Council to advise them as to what its action will be.

Dan Craig spoke on behalf of the Morgan Hill Downtown Association and commended the Council for taking the time to look at the late comer, the downtown site. He said that the downtown will move ahead, survive and thrive with or without the library. If this is not what the community wants, he did not believe that there should be a downtown. He expressed concern that this is more about attacking the downtown. It was his belief that the decision that is pending is whether there is to be a further analysis of the downtown site. He said that there are a lot of questions and issues that need to be addressed. He was not sure that the public understands this fact. He said that the downtown merchants do not have the time to circulate a petition for a downtown library site. He stated that individuals who have viewed the downtown library site plan have provided positive responses. He was pleased that the Council was taking the downtown into consideration in the process and trusted that it would do what is best for the community when it makes its decision.

No further comments were offered.

Mayor Kennedy stated that earlier today, he sent an e-mail to Council members proposing that the question of placing an advisory vote on the November 2, 2004 ballot be agendized for the July 21, 2004 Council meeting. This would allow the Council the opportunity to discuss the option of placing a measure on the ballot. His specific recommendation is that this be an advisory vote.

City Council Action

CONSENT CALENDAR:

<u>Action:</u> On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Approved</u> Consent Calendar Items 1-15 as follows:

1. <u>SUBDIVISION APPLICATION, SD-04-06: SAN PEDRO-DICONZA</u>

<u>Action:</u> <u>Took no action</u>, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

2. <u>AMENDED RIGHT-OF-WAY PURCHASE AGREEMENT FOR TENNANT AVENUE</u> WIDENING (APN: 817-04-002)

<u>Action:</u> 1) <u>Approved</u> Amended Purchase Price; and 2) <u>Authorized</u> the City Manager to Execute Purchase Agreement, Subject to Approval as to Form by City Attorney, with the Owner of APN: 817-04-002, for the Total Compensation of \$102,000 Plus Escrow and Closing Costs for the Acquisition of Portions of This Property.

3. <u>CONDOMINIUM PARCEL MAP APPROVAL FOR R.A.R. CONSTRUCTION-ADAMS</u> <u>COURT</u>

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<u>Action:</u> 1) <u>Approved</u> the Condominium Parcel Map, Including the Abandonment of a Storm Drain Easement and Temporary Turn-Around Easement on the Property; and 2) <u>Authorized</u> the Recordation of the Map.

4. PUBLIC WORKS MAINTENANCE AGREEMENTS FOR 2004-2006

<u>Action:</u> 1) <u>Approved</u> New Maintenance Agreements for: Striping and Signing, Traffic Signal Maintenance, Tree Pruning, Laboratory Services for Potable Water Sampling and Analysis, and City-wide Landscape Services; and 2) <u>Authorized</u> the City Manager to Execute the Agreements on Behalf of the City, Subject to Review and Approval by the City Attorney.

5. AWARD OF DEWITT SEWER REPLACEMENT PROJECT

<u>Action:</u> 1) <u>Awarded</u> Contract to Pacific Underground Construction, Inc. for the Construction of the Dewitt Sewer Project in the Amount of \$410,025, Subject to Review and Approval of the City Attorney; and 2) <u>Authorized</u> Expenditure of Construction Contingency Funds, Not to Exceed \$41,000.

6. <u>AWARD OF CONTRACT TO PROVIDE PUBLIC WORKS INSPECTIONS ON AN AS-</u> NEEDED BASIS

<u>Action:</u> 1) <u>Approved</u> a Professional Services Contract with Testing Engineers, Inc. (TEI) to Provide Public Works Inspection Services on an As-needed Basis, at a Cost Not to Exceed \$90,000 for Fiscal Year 2004-2005; and 2) <u>Authorized</u> the City Manager to Execute the Contract, Subject to Review and Approval by the City Attorney.

7. RESOLUTION ADOPTING THE CITY'S FLEXIBLE BENEFITS PLAN – SUMMARY PLAN DESCRIPTION AND PLAN DOCUMENT AS AMENDED AND RESTATED ON JANUARY 1, 2004 - Resolution No. 5819

<u>Action:</u> <u>Adopted</u> Resolution No. 5819, the City of Morgan Hill's Amended Cafeteria Plan: Summary Plan Description and Plan Document Effective January 1, 1997, as Amended and Restated, Effective January 1, 2004.

8. RESOLUTION ADOPTING AMENDMENTS TO DEFERRED COMPENSATION PLAN WITH HARTFORD LIFE INSURANCE COMPANY – Resolution No. 5820 Action: Adopted Resolution No. 5820.

9. ADOPT ORDINANCE NO. 1679, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1679, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR PHASE 6 OF THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN COVERS A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF

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HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) (APPLICATION ZA-04-01: HALE-GLENROCK BUILDERS).

10. ADOPT ORDINANCE NO. 1680, NEW SERIES

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1680, New Series, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 04-01 FOR APPLICATION MP-02-03: TILTON-GLENROCK (APNS 764-9-06, 16, 17, 32 & 33).

11. ADOPT ORDINANCE NO. 1681, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1681, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1617, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-04: CHRISTEPH COURT - KOSICH TO INCORPORATE A SIX-MONTH EXTENSION OF TIME FOR A SINGLE DWELLING UNIT AND TO ALLOW FOR AN ALTERNATIVE MEASURE P COMMITMENT IN LIEU OF A FIVE-FOOT PATHWAY (APN 764-32-024)/(DAA-00-01: CHRISTEPH - KOSICH).

12. ADOPT ORDINANCE NO. 1682, NEW SERIES

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1682, New Series, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT, DA-03-10 FOR MP-02-14: COCHRANE – COYOTE ESTATES (APNS 728-35-008, 010; 728-36-001, 010).

13. ADOPT ORDINANCE NO. 1683, NEW SERIES

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1683, New Series, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF MASSAGE ESTABLISHMENTS AND PRACTITIONERS.

14. ADOPT ORDINANCE NO. 1684, NEW SERIES

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1684, New Series, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.04

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(PURCHASING) OF TITLE 3 (REVENUE AND FINANCE) AND DELETING SECTIONS 3.04.320, 3.04.330, 3.04.340, 3.04.350, 3.04.360, AND 3.04.410 OF THE MUNCIPAL CODE OF THE CITY OF MORGAN HILL REGARDING LOCAL PREFERENCE, THRESHOLD AMOUNTS FOR BID, RECYCLED PRODUCTS, EMERGENCY EXEMPTIONS, AND DONATION OF UNUSABLE MATERIAL.

15. <u>MINUTES FOR THE CITY COUNCIL SPECIAL MEETING OF JUNE 23, 2004</u> *Action: Approved the Minutes as Submitted.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chair Sellers, the City Council/Agency Board unanimously (5-0) Approved Consent Calendar Items 16 and 17 as follows:

- 16. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 16, 2004

 Action: Approved the Minutes as Submitted.
- 17. <u>JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 23, 2004</u>
 <u>Action: Approved the Minutes as Submitted.</u>

Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Agency Member Tate and seconded by Vice-chair Sellers, the Agency Board unanimously (5-0) Approved Consent Calendar Item 18 as follows:

18. MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) 4TH QUARTER REPORT AND ANNUAL WORK PLAN AND AGREEMENT

<u>Action:</u> 1) <u>Accepted</u> 4th Quarter Report; 2) <u>Reviewed and Accepted</u> Fiscal Year 2004-2005 Annual Work Plan; and 3) <u>Authorized</u> the Executive Director to Negotiate and Execute an Agreement with the Morgan Hill Downtown Association (MHDA) in an Amount Not to Exceed \$97,500, Subject to Review and Approval by Agency General Counsel.

City Council Action

PUBLIC HEARINGS:

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19. PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FISCAL YEAR 2004-2005 ANNUAL ASSESSMENT FOR THE FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT – Resolution Nos. 5821, 5822, 5823, 5324, 5825, 5826

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action:

On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Adopted</u> Resolution Nos. 5821 and 5822, Confirming the Fiscal Year 2004-2005 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, Excluding the Conte Gardens and Sandalwood Estate Zones.

Mayor Kennedy indicated that he resides within 500 feet of the Conte Gardens zone. Therefore, he would be recusing himself from this zone. He excused himself from the Council Chambers.

Action:

On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Kennedy absent, <u>Adopted</u> Resolution Nos. 5823 and 5824, Confirming the Fiscal Year 2004-2005 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, <u>Referring Only</u> to the Conte Gardens Zone.

Mayor Kennedy resumed his seat on the Dias.

Council Member Chang recused herself from the Sandalwood Estates zone and stepped out of the Council Chambers

Action:

On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote, with Council Member Chang absent, <u>Adopted</u> Resolution Nos. 5825 and 5826, Confirming the Fiscal Year 2004-2005 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, <u>Referring Only</u> to the Sandalwood Estates Zone.

Council Member Chang resumed her seat on the Dias.

20. <u>DEVELOPMENT AGREEMENT AMENDMENT, DAA-98-11: SPRING-MALONE/FILIPOWICZ – Ordinance No. 1685, New Series</u>

Planning Manager Rowe presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Waived</u> the reading in full of Ordinance No. 1685, New Series.

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Action:

On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council <u>Introduced</u> Ordinance No. 1685, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1487, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING — MALONE/FILIPOWICZ TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

21. <u>DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-11: SAN PEDRO-DICONZA</u> – Ordinance No. 1686, New Series

Planning Manager Rowe presented the staff report.

Mayor/Chairman Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action:

On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Waived</u> the reading in full of Ordinance 1686, New Series

Action:

On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council <u>Introduced</u> Ordinance 1686, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE ALLOCATIONS AND THE PHASING OF THE PROJECT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

22. REVIEW OF THE FINAL ENVIRONMENTAL IMPACT REPORT (EIR FOR THE INSTITUTE GOLF COURSE AND MATHEMATICS CONFERENCE CENTER (Continued from 6/9/04) – Resolution No. 5827

Planning Manager Rowe presented the staff report, indicating that two actions are being requested of the Council: 1) adoption of a resolution that adopts findings and certifies the final EIR for the Institute Golf Course, the Mathematics headquarters and conference center; and 2) introduction of an ordinance, rezoning the subject property from Open Space to Planned Unit Development, exhibit C to the zoning amendment ordinance, and the environmental mitigation measures that are not currently part of the project that would be adopted as conditions of project approval. He indicated that this item was continued from a special City Council meeting held on June 9, 2004 to allow the applicant an opportunity to submit documentation in the EIR administrative record that would support alternative

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mitigation measures which were presented at the June 9 meeting. He stated that staff met with the applicant on June 18 and with the applicant's attorney and environmental consultants on July 1, 2004. He said that these meetings were held to review and discuss the applicant's equivalent mitigations that have been submitted and have been included in the Council's agenda packet. He informed the Council that the July 1 meeting also included the City's environmental consultants who are in attendance this evening. He said that a consensus was reached at the July 1 meeting regarding equivalent mitigations that could be supported based on the information received from the administrative record. He stated that the agreed upon changes are incorporated in a revised exhibit C, the supplemental report presented to the Council prior to this evening's meeting.

Planning Manager Rowe addressed the following modifications:

- 1) Vegetative buffers around the pond. He stated that the EIR recommends that all ponds on site have a 10-foot buffer around them to protect the red legged frog, an endangered species, and to provide a bio filter to preserve water quality. The means to achieve this is by providing a 10-foot area of tall unmaintained grasses. He informed the Council that the applicant objected to the 10-foot buffer requirement adjacent to areas of play as the applicant does not believe that the mitigation is necessary because the analysis of water samples indicate that there is not a problem with fertilizers or pesticide runoff. Another reason cited at the July 1 meeting is that the tall grass would obstruct views of the pond and would trap golf balls that might otherwise roll onto the pond if a ball is hit poorly. He stated that in lieu of the tall grass it was agreed that other methods could be provided such as low growing groundcover with irrigation provided beneath instead of overhead irrigation; mulch; or other maintained surfaces to achieve the same result. He referred the Council to condition 2d located on page 2 of Exhibit C contained in the supplemental memo. He said that it was staff's belief that there was agreement on July 1, in concept, to accept the change of establishing performance measures rather than imposing a specific design for the buffers.
- 2) Water Quality setback. He indicated that the EIR recommends a water quality setback of 50-feet from the Correlitas Creek in its tributary. At the July 9 meeting, the applicant requested that the water quality setback be measured 30 feet from the highest anticipated waterline of the creek as determined by the Regional Water Quality Control Board. He stated that the City's consultants looked at this and indicated that this would be equivalent to using 50-feet. Therefore, condition 2c, page 2 of Exhibit C, reflects this change.
- 3) Encroachment into riparian habitat setback area. He said that the EIR recommends that a 100-foot activity setback be established from the edge of the high quality riparian habitat and a 25-foot setback from the lower riparian areas. He stated that this mitigation would require alteration of the course. As an alternative, it was agreed that the tees and greens that are retained in the encroachment area can be mitigated by reestablishing/protecting the riparian habitat on a 2-1 ratio within 3 miles of the encroachment of the Llagas Creek watershed. He indicated that this change has been incorporated into condition 5g, page 4 of Exhibit C.

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Planning Manager Rowe indicated that any other changes contained in the document are changes made to correspond to the agreed upon changes in terms of how to measure setbacks, and how one defines water quality setback system as performance measures. He stated that it is staff's recommendation that the Council adopt the resolution certifying the EIR under agenda item 22 with the amended findings contained in the supplemental report; and introduce the ordinance approving the zoning amendment, including exhibits A (map), B (list of approved uses), and C, the revised exhibits and conditions of approval following receipt of public testimony. He indicated that the second reading and adoption of the ordinance will occur on July 21. On July 21, staff will recommend the approval of the mitigation, monitoring, and reporting plan (MMRP). He indicated that the Council would need to adopt the MMRP before approving the project. He said that the MMRP would restate the mitigation or avoidance measures from the EIR, identifies who is responsible for compliance, the method of compliance and the timing of compliance of the mitigations. He informed the Council that the EIR consultants Michelle Yasney and Demitri Lucas with Powers and Associates; Dan Stephens consulting biologists; and Norm Hantzsche, consulting engineer were in attendance this evening and available to answer questions that the Council may have. Also, in attendance was Roger Beers, the City's EIR attorney.

Council Member Carr said that he continues to hear comments about a couple of specific items. He did not believe that there have been changes to these items in the EIR since the last time the Council reviewed the different items. These items relate to views, safe water, runoff containment, and traffic. He referred to the July 7 memorandum, page 9, condition B4 that talks about visual changes resulting from the proposed project. It is stated that the "applicant has submitted a detailed landscape plan for review by the City with authority reserved to the City to determine if the row of trees along Foothill Avenue should be removed or diminished." He said that in reading this sentence the City will have a point where it takes a look at the landscaping plan to address the concern.

Planning Manager Rowe clarified that the City's Architectural Review Board (ARB) would be the body reviewing the landscape plan.

Council Member Carr referred to page 12, item E4 relating to safe water/runoff containment. He noted that it is being stated that "The proposed project will result in a net increase of none point source pollutants entering surface waters. Without mitigations, this could be a significant impact. Specific mitigation measures have been identified on page 74 of the EIR that will reduce this impact to a less than significant level and that these will be imposed as conditions of approval of the project." He noted that for these mitigations the City will be able to address the issues of water quality and safe waters. He referred to page 12, item 6. He noted that this item talks about a potentially higher nitrogen loading levels in downstream waters and that it is stated on page 75 of the EIR that it will reduce the impact to a less than significant level, imposing conditions of approval on the project. He noted that the water contamination issues would be addressed with the identified mitigation measures. He referred to page 13, item G, traffic impacts. He read that "The proposed project will not generate traffic that would exceed the capacity of the existing roadway system. The City Council finds that this is a less than significant impact." He said that he continues to hear the concern that this is going to be a professional course. If it is to be used as such by the applicant, they will have to return to the City and reapply for that specific use. He sated that any increased traffic impacts would have to be mitigated as a result.

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Planning Manager Rowe indicated that the condition would limit the use to a maximum of 36 rounds of golf per day for approximately six months of the year. Uses such as charity golf course tournaments would require an amendment and that the City would need to evaluate the impacts, including traffic impacts, associated with the change in use, including any possible mitigations to be incorporated at that time.

Mayor Pro Tempore Sellers indicated that most of the individuals who reside in the area and those involved in the project were not around when the prior use produced significant traffic. He said that traffic impacts associated with the proposed use would be significantly less than the prior use of the site as "Hill Country." He felt that it was important to note that the original use of the site was far more significant than anything that is being proposed at this time.

Mayor/Chairman Kennedy opened the public hearing.

Stephen Sorenson, speaking on behalf of the applicant, stated that at the last meeting, the Council requested that City staff, the environmental groups and the applicant meet with the intent of working out resolutions of the outstanding issues. He said that the meeting was held and that it was successful in terms of resolving issues and making suggestions to meet the needs of all concerned as well as conforming to the requirements of CEQA. However, due to the time constraint involved, not all of the issues were resolved. He stated that the issues involve Exhibit C. He referred to item 2c, the red legged frog mitigation measures, specifically the vegetated buffers around the pond. He noted that this mitigation measure asks for unmaintained dense grasses at a distance of 10 feet around all ponds. He stated that the applicant proposes an equivalent/superior mitigation to this in that they would create vegetative buffers around the pond in those areas that are out of play. It is the theory that the applicant would like to create an attractive frog habitat in areas that are less risky to the frog so that there is not the risk of incidental take by having the frogs come onto the golf course. He indicated that Randy Long would support this theory and discuss the science behind this alternative mitigation. He indicated that Dr. Mark Jennings, a noted frog expert, was in attendance this evening who would address the habitat values.

Randy Long introduced Dr. Mark R. Jennings, a leading expert on the biology of the red legged frog as well as other special status species.

Dr. Mark Jennings said that he has studied the frog issues and their habitat requirements for the past 10 months. He stated that the golf course supports between 25-65 red legged frogs under present conditions and that they are doing reasonably well with the habitat items that have been proposed in the amendment. He felt that the area would achieve greater counts of frogs with the proposed mitigations at the Institute Golf Course which should continue in perpetuity. He stated that the frogs do alright in the present situation and will do even better when changes to the habitat are made by creating places for them to hide adjacent to the ponds with rock covers. He indicated that the rock covers will be compatible with the golf course. The buffers proposed in the non play area will also create more frog habitat and that one could only see the number of red legged frogs as well as tree frogs and toads going up in the future when the items are completed. He state that rock shelving or rock walls are being proposed around each pond that will have vegetation growing between them and that the rock covers

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will allow the frogs to hide. They will be low enough so as not to interfere with golf play while allowing the frogs to hide and be safe from birds and other predators. Under the present idea, the frogs will not want to sit on the short grass because it exposes them to predation. Therefore, the chances of an incidental take are greatly reduced.

Mr. Sorenson requested that the wording of the first sentence relating to the buffer be changed to read: "All ponds on site shall have a buffer around the pond perimeter of at least 10 feet in width which may consist of unmaintained or maintained dense grasses." This amendment would allow the applicant to achieve the environment that Dr. Jennings has discussed which would be hospitable to a frog and discourage the frog from going into an area where it may become at risk. He referred to section 8B3, last sentence relating to the nitrogen control plan. The sentence reads "The nitrate loading from all sources shall be demonstrated to not exceed the estimated nitrate loading that would have occurred from pre project conditions. That is, nitrogen loading on the whole site when it contained the 40-acre golf course which is estimated in the EIR to between 18.7 and 38.4 milligrams per litter." He said that the issue he has with this sentence is a technical one. He stated that currently the water in the aquifer used to irrigate and from which they pump is at a level of 48 milligrams per litter. He said that this requirement is stating that they should be between 18.7 and 38.4 milligrams per litter. prescribing that the applicant should purify the aquifer, requiring that the water going back in should be better than the water being pumped out. He requested that the last sentence be amended to read "...48 milligrams per litter" instead of the 18.7 to 38.4 milligrams per litter or something as simple as "Shall not degrade the aquifer." If the aquifer level changes and gets better, the applicant would not do anything to degrade the aquifer. He felt that this would satisfy the requirement of the mitigation.

Mr. Sorenson referred to item 8B13. He noted that a phrase was added to the final sentence to read: "... or a filtration system with treatment equivalent to a 25-foot vegetative buffer as approved by the City." He stated that the applicant agrees with this statement. However, if you look at item 8CJ, there are three asterisks after item j. The second asterisk appears to be the same mitigation that he believed the typist forgot to include. He requested that the final version of these two items are consistent and incorporate the above phrase. Under other conditions 25 and 26, drainage conduits on Foothill Avenue, he stated that staff and the applicant did not have the opportunity to address these conditions at the last meeting. He said that the applicant is more than willing to help with these issues even though the EIR indicates that the project is not causing offsite flooding. Everyone recognizes that the conduits are undersized and that they need to be increased in size. He indicated that the applicant may not have the right to make the changes. Under item 25, the conduit that crosses Maple Avenue, is located on City property and that it is the responsibility of the City. He said that the applicant may not be able to go in and make the change on its own. The conduit as identified in item 26 is located on Foothill Avenue, ½ mile south of the project on private property in the County's jurisdiction. He requested clarification/modification of the wording such that should the applicant not be allowed to make changes by the property owner or the governing agency, the applicant has an out of the condition(s).

Mayor Kennedy recommended that the mitigation be amended to stipulate in cooperation or with the assistance of the City of Morgan Hill to come to a solution.

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City Attorney Leichter stated that it was her understanding that the concern, as stated by Mr. Sorenson, is simply, that the conditions be subject to landowner approval to enter onto property in order to make corrections.

Mr. Sorenson indicated that this is the correct interpretation and that this was the only language that he is seeking to add.

City Attorney Leichter clarified that the City cannot impose mitigation measures which are subject to the control of a third party. She stated that this is a legally implicit condition. However, if it would make Mr. Sorenson more comfortable, the City could stipulate that the conditions are subject to landowner permission to enter onto property and make the requisite changes.

Council Member Tate said that it was his understanding that there were two reasons for the 10foot buffer. He noted that Mr. Sorenson addressed one of the reasons relating to the frogs. He noted that there is also the contamination of the water preventing inflow into the ponds to contaminate the waters. He noted that Mr. Sorenson did not address this issue.

Mr. Sorenson agreed that he did not address the prevention of water inflow into the ponds to avoid contamination of the water. He felt that the grass proposed would be an excellent buffer. He said that there is a body of knowledge that states that the grass will filter any harmful contaminants from the water. The applicant has also conducted monitoring during the course of the temporary use permit which indicates that the water on site has not been contaminated by fertilization or pesticide. As part of the mitigation and monitoring plan, the monitoring will continue. He stated that the applicant is not objecting to the other conditions that are a part of item 2c concerning fertilization and watering. He said that the applicant could, in terms of an additional mitigation, place baskets on the mowers and capture the cuttings so that the cuttings do not get into the water.

Mayor Pro Tempore Sellers addressed nitrogen loading. He noted that Mr. Sorenson addressed the fact that the current water table is at a level that exceeds the levels mentioned. He inquired whether there was evidence of the 48 milligrams per litter prior to anything being done to the site.

Mr. Sorenson informed the Council that a test well exists that is operated by the Santa Clara Valley Water District located across the street from the property. It was his belief that the test results show that from 1997 onward the nitrogen in this well has gone down. In looking at the aquifer in this basin, the nitrogen level is at 68 milligrams per litter. Therefore, the water underneath the property is significantly better than the aquifer in general. He said that the applicant has used fertilizer and pesticides within the 10-foot buffer around the ponds thus far with no deleterious affects on the water. He stated that the applicant is willing to agree to the tenancy of item 2c regarding fertilizers and pesticides but requested the ability to use a catch basin when mowing the lawn. He stated that the applicant would agree to comply with the request to fertilize with a below ground drip irrigation system with the intent of avoiding spraying in the vicinity of the water in case the wind comes up.

City Manager Tewes indicated that the Council will be hearing more comments under the public hearing, indicating that there may be other issues raised by speakers. He stated that staff would

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appreciate the chance to have the City's consultant review the issues and explain the reasons for the recommended mitigation conditions.

Peter Keesling said that he has been a 25-year Foothill Avenue resident, approximately .9 miles south of the entrance used for the golf course/institute. He expressed concern with the resolution certifying the EIR for a project that was constructed without permits and without acknowledgment of the regulations associated with construction. He noted that several mitigations have been proposed, through the EIR, many that would affectively take care of the concerns of the residents based on the scientific evidence that has been presented. His biggest concern is whether or not there will be adequate monitoring of the project so that residents know that the mitigations are being implemented, noting that the applicant has already shown disregard for the rules. He was not sure whether there were methods available to monitor the project. He did not believe that there was enough independent knowledge of prior nitrate level testing to state that what has been done already may have raised the levels of nitrate to the level that they are now. He felt that this is something that needs to be addressed before the Council makes a final decision. He stated that citizens need to know that the mitigations will be implemented. He agreed that you cannot impose a condition upon an applicant that requires approval by a property owner. If the City is to state that the applicant cannot be forced to mitigate runoff because a private citizen does not authorize access to property, there is still the problem with the runoff. It was his belief that it was incumbent upon the applicant to find another way to mitigate the runoff problem.

JJ Vogel said that he was in attendance to receive the truth, equal treatment and accountability. He stated that he would stand behind Mr. Fry if he was right. However, he felt that there have been many different opinions regarding this project. He did not believe that this was a routine violation or mistake. He said that several local, state, and federal agencies have expressed concern with drainage, roads and highways. The city's draft EIR states a myriad of environmental hazards. The state water quality control board identified 26 environmental issues. He was not sure whether the site would be used for PGA tours. He informed the Council that a watch dog group is offering to act as an arbitrator and take the burden off everyone's back. He said that the Santa Clara County Grand Jury has forms that have been submitted about this application with more to be submitted. He reiterated that he would support Mr. Fry if he is correct and that he would support the City if it is correct. He just wanted to know the truth.

Keith Anderson, a volunteer for Environmental Advocate for South Valley Streams for Tomorrow, thanked City staff and the consulting team for doing a good job in preparing the EIR and going through the process that took over a year; and getting everyone to a point where the City is close to certifying the document. He thanked Planning Manager Rowe for his willingness to work with Streams for Tomorrow and providing them with the information sought to resolve their concerns. He stated that Streams for Tomorrow has resolved all of their issues at a staff level. He stated that he provided Mr. Rowe with a two page listing of minor errors of facts, omissions, and typos for Exhibit "C." It was his hope that this information would help present a cleaner document. He indicated that the best mitigation package for the golf course project presented to the Council was the one presented at the June 9 meeting. What the Council has before it is a slightly modified version of this document this evening. This is due to the fact that some environmental concessions have been made to the applicant. He indicated that he spent a lot of time looking at the modifications and stated that he was convinced that they are within the scope of the EIR process. He did not believe that the project has gone beyond the threshold of having the need to

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recirculate the documents or threats of litigation. It was his belief that the documentation before the Council is a legally defensible product. He stated that Streams for Tomorrow would have preferred the June 9 document but that they would support the document(s) before the Council this evening. He requested that the Council not approve anymore environmental concessions to the applicant for the illegal project. It was his belief that the Council has gone to the extreme of satisfying the applicant's needs. He felt that the Council would hear rejections of Mr. Sorenson's request regarding buffers around the ponds and that he would leave it to the City's consultants to present an update on this issue. He stated that Streams for Tomorrow would support the measure that is before the Council for certification.

Nathasha Wist thanked the City Council for approving Mori Struvi and several of the groundskeepers attendance at the IPM conference held in June, and that it was her hope that the City would continue to work with the County of Santa Clara toward implementing an integrated pest management program. She said that golf courses use a tremendous amount of pesticides, on average of 20 different insecticides, 25 fungicides, and 15 herbicides per course. She felt that this heavy use has contributed to increased rates of certain cancers and neurological illnesses among golf course superintendents. She said that this is the reason that there is a U.S. environmental protection agency paper on strategies for golf course superintendents associations for the implementation of an integrated pest management program. She expressed concern for the animals, red legged frogs and human beings. She informed the Council that a typical 18-hole golf course annually uses 50,000 pounds of dry and liquid chemicals, 7 times the amount used by large scaled agricultural use. She did not believe that this golf course is typical of a 50-acre turf course as it is a 128-acre turf golf course. She said that a typical golf course consumes 500,000-800,000 gallons of water per day. In reviewing the EIR, she saw where the applicant was out of compliance and in violations with the Clean Water Act and many other runoff acts. She indicated that in the plans she received, it continually mentions that the mitigations proposed would not satisfy the Clean Water Act. She could not understand why the City and the City Council does not insist that the applicant implement integrated pest management and reduce the amount of pesticides because there will be runoff year after year. She felt that that the aguifer was over the limit of nitrates. She stated that pesticides that go into the air in the form of pseudo estrogens and then sinks into the groundwater is a serious problem. She indicated that she tried to contact Mr. Sorenson in order to urge him and his groundskeepers to attend the County's seminar and training, noting that she never heard back from Mr. Sorenson. Should the Council approve a golf course in the area, she recommended that it be a golf course that is ecologically designed.

No further comments being offered, the public hearing was closed.

City Manager Tewes noted that a number of speakers had kind remarks about the efforts of staff and the consultants in the preparation of documents and the series of meetings held over the past couple of weeks. He clarified that the meetings were as a result of Council direction to meet with consultants after they presented alternative mitigation measures that had the equivalent affect as those presented to the Council previously. Also, to show where in the administrative records there was scientific evidence to support them. He said that the meetings were not conducted to negotiate or to give environmental concessions. After a period of time, the applicant provided suggested alternative mitigation measures, and where there were scientific evidence in the record and where it could be determined that they were of equivalent value, staff included them in the document that is before the Council this evening. He said

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that each of the issues raised by the applicant this evening were discussed in a series of meetings, most recently on July 1, 2004. In some instances, alternatives were proposed for which there was no scientific evidence in the record for which staff could make a judgment that they were equivalent. Therefore, these were not before the Council this evening. He stated that staff followed the Council's direction to pursue, with the applicant, their alternative measures that were equivalent based on scientific information found in the record.

Michelle Yesney, Vice president with David J. Powers & Associates, informed the Council that her firm assisted City staff with the preparation of the EIR. She said that the principals of the integrated pest management are reflected in the EIR and in the recommended mitigation that is included in Exhibit C before the Council this evening. She said that the document refers to the "CHAMP," which includes the principals of integrated pest management and would document all chemicals applied to the golf course for various purposes and are part of the mitigation package. With regard to the new proposal before the Council this evening to revise the buffer around the ponds and the questions relating to nitrate loading, she would ask the technical sub consultants who have assisted in the preparation of the EIR to respond to these issues. She indicated that Norm Hantzsche will respond to the issues of nitrate loading and water quality in the pond and that Dan Stephens, H.T. Harvey and Associates, the ecologist, and the principal biologist for the project would discuss the specific issues before the City Council.

Norm Hantzsche, water consultant on the EIR team, addressed the nitrogen loading issue. He said that the applicant is suggesting that the nitrogen loading mitigation measure for the golf course be changed to reflect a condition whereby the loading limit would be set at a concentration equivalent to the existing background concentration of nitrate in the ground water of approximately 48 milligrams per litter. He said that this was not the proposal in the mitigation. He stated that the mitigation measure was developed by looking at the site's prior condition, using the best information available, noting that the site was changed by the time he began his analysis. Under the prior condition, the site was contributing less nitrate through percolation from the 48-acre golf course and other activities than was occurring in the groundwater from other agricultural activity in the area. He stated that the site, in the pre project condition, was a source of dilution to the groundwater nitrate concentration. This was the basis by which the project condition was evaluated and thus the range of nitrogen loading concentrations between 18-19 milligrams per litter and 38-40 milligrams per litter. He stated that this was the best estimate of what was occurring on the site before. If the project changes and becomes a site that is percolating and recharging the groundwater at 48 milligrams per litter, the ambient concentration, then the concentration will go up because the dilution affect that the pre project conditions had on the groundwater will be heightened. He said that one can expect the groundwater nitrate concentration to go up by this change. He stated that he could not agree with the suggestion to change the nitrogen loading concentration from the project to a higher concentration equal to the ground water concentration.

Mr. Hantzsche addressed the buffers around the ponds. He said that from a water quality perspective, the purpose of the buffer is two fold: 1) to provide an area where chemicals would not be applied where there is some spacing between the edge of the water and the area where pesticides and fertilizers would be applied. In the vent of overspray mistakes/spills, there would be a buffer area to protect water from this occurrence. 2) To provide a thick grass filtering mechanism so that the runoff from the maintained turf areas receiving irrigation and chemicals, be filtered to take out sediments and any chemicals that are

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carried by the water. This also helps to slow the water runoff into the pond. It was his understanding that one of the objectives of the applicant's proposal is to allow the golf balls to be carried into the lake as an additional hazard or challenge to the golf course. He felt that this was opposite the objectives of slowing down the flow of water and the movement of chemicals in the golf course, thus the conflict with the applicant's proposal and the objectives of the idea for a filtering buffer strip. With respect to the question of the sampling that has been conducted, he indicated that there have been some grab samples taken of the ponds. He received the results of approximately two samples from each of the ponds by the time the revised draft EIR was prepared last fall. It was his understanding that additional samples have been taken. He stated that he has toured the site with the applicant's water quality and hydrologist consultant who pointed out the location where the samples had been taken. He indicated that the samples were taken on the opposite side of the lakes from the areas being discussed where turf is to be maintained up to the edge of the water. The samples were taken around the outflow points of the lake and do not represent a true measurement of affects that may have been occurring. It was his belief that the EIR stated that the sampling done was favorable but that it was a snapshot and that things could change at any point in time. He said that the buffer is being recommended as a safety factor for filtering the runoff, capturing the pollutants and slowing the water flow into the lakes as well as maintaining a buffer whereby there would be no area where chemicals would be applied. He indicated that he had made a suggestion of a subsurface irrigated system as an alternative that might be of help to the applicant in devising a different groundcover or a way to maintain this area to have irrigated grasses without having to have above ground sprinkler or above ground chemical application.

Mayor Pro Tempore Sellers inquired whether there was a possibility of having a buffer/drain that would still allow course play. He further inquired whether an outflow sampling would provide a middle ground result.

Mr. Hantzsche indicated that the applicant is suggesting a change in language such that maintained turf could occur to the edge of the water, noting that this was not the consensus reached last week. Regarding the outflow sampling, he stated that he was not being critical of the method of sampling. He felt that the consultant conducting the sampling was thinking in terms of anything leaving the pond system. He said that this is a valid question and issue to address.

Dan Stephens, biological consultants to David Powers and Associates for the EIR, addressed the buffers around the ponds. He said that the overwhelming function of the buffer, with respect of the red legged frog, is the water quality function that it serves. He said that this is 90% of the value of the buffer to the red legged frog. He stated that an unmaintained buffer, 10 feet wide, would be visually distinctive. Therefore, the likelihood of groundskeepers straying into an area that is maintained turf to the edge of the pond is higher than it would be if there was a visually distinctive buffer of some type. With respect to the incidental take of frogs that may perch or stray from the pond into maintained turf to the edge of the pond, he would concur with Dr. Jennings that this would be unlikely. He stated that you cannot completely discount this as it is possible that frogs could be present at the interface of the pond. He said that the turf may come close to the edge of the pond but that there would still be some interface and that it would be more likely that frogs would be found in other parts of the pond where the vegetation shelves would be located away from the active play areas. However, he could not state that you could totally discount the possibility of frogs being present in this area. If there is active maintenance, there is

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a slight potential that there could be incidental taking. He noted that Dr. Jennings also referred to rock piles being placed as further enhancement for the frogs in and around the ponds. He stated that he does not know the exact location or structures in which these are being placed. He said that these would be enhancements for the frogs but that they would not replace or eliminate the need for any of the specific mitigation measures that he has incorporated into the recommendations.

Ms. Yesney addressed the concern expressed by a speaker about the likelihood that the various mitigation measures that have been identified would actually be implemented as proposed. She stated that she is working with staff to finalize the mitigation monitoring and reporting plan (MMRP). She indicated that a MMRP is required by CEQA and that the Council would be considering it in association with the second reading of the ordinance. She stated that part of the MMRP is very specific, and is an item by item listing of mitigations that will be accomplished; who would be responsible for their implementation, and who, in the City of Morgan Hill, will be responsible for making sure that the mitigations are implemented.

Mayor Pro Tempore Sellers said that should there be any transgressions and concerns by the neighbors that the monitoring is not taking place, what would be their recourse?

Roger Beers, consulting attorney said that the MMRP is a public document and should be made available to any member of the public. If citizens see something that they believe may be a violation of the provisions, they are free to report them to the City. The City would be charged to correcting any violations or to rectify the situation under the MMRP program.

City Attorney Leichter said that it is important to note that there are mitigation measures imposed as a result of the findings in the EIR. Specifically, items 25 and 26 of the conditions of approval. Staff is recommending these as conditions of approval as part of the overall project's mitigation measures. She clarified that they are not environmentally required but that staff believes that it is prudent to require the applicant to complete these conditions. It was her understanding from what Mr. Sorenson has stated that there is no objection by the applicant to these conditions. She said that the City cannot impose mitigation measures that would not feasible for the applicant to do. Staff would stipulate that these conditions would be subject to land owner cooperation. She said that it was her belief that flooding was not identified as an environmental impact from this project. However, this does not mean that flooding does not exist. She said that the City can require conditions of approval in order for the Council to issue the permit. Should these conditions not be accomplished, she said that the City would have to look at other methodologies/avenues to address the flooding issue, perhaps in cooperation with the County. She said that it was her belief that the conditions task Director of Public Works Ashcraft to oversee these conditions.

Planning Manager Rowe said that staff would agree to incorporate the phrase from item 8B13 to item 8CJ as identified by Mr. Sorenson.

Mr. Beers referred to the supplemental handout, page 7 of the findings, noting that item 12 implies that the MMRP is to be adopted today and clarified that it would be adopted at time of adoption of the ordinance. He recommended the following modification: "When it adopts the ordinance, the City

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Council will also approve a mitigation and monitoring plan..." As a further correction, he recommended that page 8, paragraph 2 under section II be amended to read: "...mitigation measures identified in the revised draft EIR as not presently incorporated into the proposed project, will be with modifications and additions set forth in the final EIR and adopted as conditions of the project's approval."

Council Member Tate noted that Mr. Anderson suggested that he submitted typographical corrections and inquired whether these have been incorporated into the document(s).

Planning Manager Rowe said that minor edits have not been incorporated this evening but that they would be incorporated in the final document.

Mr. Long responded to a statement made earlier that these are concessions being brought forth by Mr. Sorenson this evening. He said that these are mitigations relating to science. He said that the pond area lacks cover for the frogs and that the mitigation will take care of this concern. He said that animals will be drawn to cover as they do not like to be exposed. He does not want animals to be drawn to areas where they will be endangered or harmed. He has spoken with Fish and Wildlife staff and built in consultations with them about the incidental take. The first thing one needs to do is minimize anything that you can think about that could be harmful to the species. The Fish and Wildlife has already told the City that they are concerned about frogs being hit by golf balls. If the area is built with cover, the frogs will be attracted to the cover. He said that he will approach agencies to secure the appropriate permits. He stated that the applicant does not want to be placed in a situation where the City's conditions collide with other agencies. He stated that sampling results show low nitrates and no pesticides/fertilizers. He felt that turf grass would be a buffer. He has variations of water samples and stated that the results are all the same.

City Attorney Leichter said that the applicant may have had discussions with Fish and Wildlife and Water District staff. However, the record before the Council reflects that the Water District and the Fish and Wildlife have approved and supported the mitigation buffer. The City does not have a letter from the Fish and Wildlife Department to the contrary.

No further comments being offered, the public hearing closed.

Mayor Pro Tempore Sellers noted that the City is not proposing specific requirements for the pond but that the City wants the mitigation to be done right so that there is no impact to the water. It was his belief that there is significant latitude on how the applicant will meet the mitigation measure.

Planning Manager Rowe said that with the performance measures, it is being recommended that the buffer not be mowed or maintained with mechanized equipment. Chemicals or fertilizers cannot be applied to the surface and that the surface has to be designed to avoid/retard surface flow. If the plants meet the performance measures, it would satisfy the performance measure.

Mayor Pro Tempore Sellers said that he could not conceive a situation where the frogs would be harmed by a lawn mower as he does not see frogs sitting at the edge of the buffer area.

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Planning Manager Rowe said that the buffer provides that mechanized equipment not be used 10 feet from the pond in order to avoid incidental take. The mitigation provides the greatest amount of assurance that taking will not occur.

City Attorney Leichter noted that the City received testimony that the Federal Endangered Species Act has no gray area and that there is no accounting for frogs that are on the lawn when the mower comes by. When there is a take, there is a take. She indicated that the mitigation measure is designed to prevent the take.

Council Member Tate agreed with Mayor Pro Tempore Sellers comments but noted that the Council was here this evening as the result of asking the City's consultants and the applicant to get together to work out the issues. He noted that both were able to work issues and come to some agreement. However, they were not able to reach agreement on this point. Therefore, he would have to accept the City's consultants' input on what is legally required. He stated that he understands the logic of the argument but felt that the Council was at the point where it has to accept what is before it and move forward.

Action:

Council Member Tate made a motion, seconded by Council Member Carr, to <u>Adopt</u> Resolution No. 5826, Certifying the Institute Golf Course EIR, Including the Adoption of Findings of Overriding Consideration with Respect to the Cumulative Loss of Agricultural Land, incorporating the amendments as stated above.

Mayor Kennedy stated that he held a fundraising event 2.5 years ago at the Math Institute property. He requested that the City Attorney provide a written opinion from the Fair Political Practices Commission (FPPC) with respect to whether or not this constituted a conflict. He indicated that he has been advised that this does not imply or constitute a conflict.

City Attorney Leichter said that an opinion was rendered in June 2004 by the FPPC and that based on the time period identified and the amount of money received, it was deemed that it was not a violation of the Political Reform Act.

Mayor Kennedy stated that based on this opinion from the FPPC, he would be voting on this issue. He requested friendly amendments, independent from the EIR itself that in addition to the mitigation measures outlined that the Council ask staff to provide it with quarterly status reports. This would allow the Council to keep a watchful eye on what is taking place. Further that the Council assure a good neighbor policy. This could be in the context of a South County Joint Planning Advisory Agency or establishing a relationship with the San Martin Neighborhood Alliance. This would allow the City to monitor the progress of the project and not loose site of the neighbors' concerns.

Council Member Tate stated that he would support Mayor Kennedy's recommendation as a separate motion.

Vote: The original motion carried unanimously (5-0).

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City Attorney Leichter stated that the Council could direct the consultant to include as part of the mitigation monitoring plan that there is periodic communications with the San Martin residents through the San Martin Alliance Group. She informed the Council that the mitigation monitoring plan will require that the applicant pay for the cost of implementing the plan.

Action:

On a motion by Mayor Kennedy and seconded by Council Member Carr, the City Council unanimously (5-0) <u>directed</u> that staff provide quarterly reports to the City Council; and <u>directed</u> the consultant to include periodic communications with the San Martin residents through the San Martin Alliance Group as part of the mitigation monitoring plan.

23. **ZONING AMENDMENT, ZA-03-03: FOOTHILL – THE INSTITUTE** (Continued from 6/9/04) – *Ordinance No. 1687, New Series*

Planning Manager Rowe presented the staff report, requesting that the Council introduce the ordinance approving the zoning amendment to rezone the property.

Mayor Kennedy opened the public hearing.

Peter Keesling reiterated his concerns, noting that some of the concerns have been addressed by staff and the consultants. He indicated that this project proceeded for a number of years. He expressed concerned with traffic impacts. If the zoning amendment would impact traffic more than is being experienced, it would be of concern to San Martin residents.

JJ Vogel stated that he would support the project if what Mr. Fry states is true. He requested that a condition be included that stipulates that if anything is found to be wrong years down the road, that the City has the authority to shut down the business. Further, that the homeowners of the area receive a written guarantee from Mr. Fry that they would be safe from hazards. In addition, that the application be placed on hold as everything is convoluted.

No further comments being offered, the public hearing was closed.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Waived</u> the reading in full of Ordinance No. 1687, New Series.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council <u>Introduced</u> Ordinance 1687, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A 192±-ACRE SITE CHANGING THE ZONING DESIGNATION FROM OPEN SPACE (OS) TO PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 14830 FOOTHILL AVENUE BETWEEN MAPLE AVENUE AND ROBIN AVENUE. (APNS 825-29-002, 043, 044, 045 AND

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825-30-007), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

24. <u>ZONING AMENDMENT APPLICATION, ZAA 01-20: TENNANT-SAFEWAY</u> – Ordinance No. 1688, New Series

Planning Manager Rowe presented the staff report. He informed the Council that in April 2004, it came to staff's attention that the store, as it was being constructed, did not provide a 25-foot driveway. Based on where the side of the building was to be constructed, with an eight foot sidewalk, would result in a drive aisle of a little less than 22 feet in width. He indicated that the matter was brought to the attention of the Planning Commission where they recommended that the applicant pursue an amendment to modify the width of the landscape area in order to achieve the widest possible driveway to preserve the circulation aisle. He stated that this matter was considered by the Planning Commission on May 8 where the Commission provided a number of recommendations to correct the situation. He stated that the Safeway Store was not built larger than approved and that it appears to be an error where the location of the curb. This error came to light when staff measured the aisle width. He informed the Council that the Planning Commission is recommending that it approve an amendment to the precise plan with the following stipulations: 1) the drive aisle is to be 24-feet in width with a six foot landscape planter area in lieu of the sidewalk proposed continuously along the site; 2) the installation of distinctive payers to identify crossing points; 3) selection/tree heights and the location to be reviewed by the Architectural Review Board (ARB); 4) shrub planters adjacent to the columns to be repositioned between the columns to create a separation of the pedestrian areas from the circulation aisle; 5) the height of the metal buttresses and trellises to be reviewed as a design detail by the ARB; and 6) the installation of directional signs in clear/visible locations in the center.

Mayor Pro Tempore Sellers indicated that he has reviewed the staff report, including all of the Planning Commission comments. He felt that the Planning Commission did an excellent job in trying to make the area attractive. He did not know if there was much of a pedestrian access between the shops and the theaters. He said that the applicant did a great job of making the project environmentally attractive but this created a significant opportunity for young individuals to hang out outside the theater before or after a movie. He felt that this would create a traffic and safety issue. He inquired whether this concern has been reviewed by the police department and what type of lighting is being proposed. It was his belief that as the trees and shrubs grow, there is a potential of a nightmare to the situation as far as monitoring and keeping the youth safe.

Planning Manager Rowe indicated that the original approval of the PUD and the proposed revisions were reviewed by the City's development review committee which included review by the Police Department. He said that there are a number of issues that the police department has and has required, as part of the original PUD approval, changes in the lighting and landscaping plans to mitigate the problem. He informed the Council that the Planning Commission felt that the ARB, with a landscape architect on board, would be in a better position to address the specifics.

Mayor Pro Tempore Sellers indicated that he read the latitude afforded to the ARB. He felt that it was important to pass on to the ARB that they review the aesthetics and consider the safety issues as well.

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Council Member Carr noted that one of the items discussed at the June 8, 2004 memorandum to the Planning Commission was other site improvements that can be considered, specifically a sidewalk along the Vineyard frontage to improve the pedestrian movement. He inquired whether the Planning Commission considered this condition or whether the Safeway proponent ruled this condition out.

Planning Manager Rowe responded that the architect for Safeway indicated that they were not supportive of this condition. He stated that the condition was discussed at length by the Planning Commission and that it was the consensus that the improvements being proposed on site would provide a greater benefit to pedestrians. He said that there was some question about how many individuals would utilize a walkway given that there is a general lack of sidewalks across the street.

Council Member Carr indicated that one of his concerns about Tennant Station is that it should have four fronts to it, noting that it does not have four fronts. He felt that the Vineyard side is the back of the shopping center. It was his belief that this concern had been addressed but that it may be that it was not addressed well enough to make that side of the shopping center less of a back and less attractive to individuals. He felt that the installation of sidewalks, making it more pedestrian friendly, would help address this concern.

Planning Manager Rowe stated that through the review process, staff addressed the fact that you were not looking at the backside of a building from Vineyard. He stated that Council Member Carr was correct that the Tennant and Monterey frontages have sidewalks and that the Vineyard frontages lack sidewalks.

Mayor/Chairman Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) Waived the reading in full of Ordinance No. 1688, New

Series.

Action: On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the

City Council <u>Introduced</u> Ordinance No. 1688, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES, FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PUD DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE (APN's 817-06-039, 040 & 41) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

25. <u>ANNEXATION, ANX-03-04: BURNETT-MORGAN HILL UNIFIED SCHOOL</u>
<u>DISTRICT (MHUSD) SOBRATO HIGH SCHOOL</u> – *Resolution No.* 5827

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Planning Manager Rowe presented the staff report, the annexation of three parcels.

Council Member Carr indicated that the City-School Liaison Committee discussed ways to handle fees for these types of requests. He noted that under fiscal impact the applicant would be paying a per hour fee for processing the annexation application.

Mr. Rowe indicated that the fees proposed would pay for the City's expenses to process the annexation application.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Adopted Resolution No. 5827, Approving the Annexation.

City Council and Morgan Hill Financing Authority Action

PUBLIC HEARINGS:

26. <u>ISSUANCE OF BONDS FOR MORGAN HILL POLICE FACILITY</u> – Resolution Nos. 5828, 5829 and MHFA-4

Director of Finance Dilles presented the staff report relating to the various bond documents that would lead to the financing of the new police facility. He said that the bond documents propose approximately a \$7.3 million bond that will be enough to purchase the police facility and provide part of the financing for construction. Staff is awaiting the Council's acceptance of the project in order to proceed with finalization of the bond issuance and acquisition. He indicated that the Council would be seeing this request at its next Council meeting. He stated that staff is expecting to receive an interest rate of approximately 5% on the net interest cost on the bonds.

Mayor/President Kennedy opened the public hearing.

City Treasure Roorda indicated that time is of the essence to take advantage of interest rates before they go up. The sooner the Council acceptance is granted, the sooner the City can go to the market and try to take advantage of the low interest rates.

No further comments being offered, the public hearing was closed.

Acting as City Council:

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Adopted Resolution No. 5828, Making Finding of Significant Public Benefit.

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Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the

City Council unanimously (5-0) <u>Adopted</u> Resolution No. 5829, Approving Certain Documents in Connection with the Issuance of Morgan Hill Financing Authority Lease

Revenue Bonds.

Acting as Morgan Hill Financing Authority Commission:

Action: On a motion by Commission Member Tate and seconded by Vice-president Sellers, the

Finance Authority Commission unanimously (5-0) <u>Adopted</u> Resolution No. MHFA-4, Authorizing the Sale, Issuance, and Delivery of Lease Revenue Bonds and Approving

Certain Documents.

City Council Action

OTHER BUSINESS:

27. <u>HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES – 16415</u> <u>MONTEREY ROAD</u>

City Manager Tewes presented the staff report. He stated that the property owner is seeking the opportunity to pay in lieu fees rather than performing the utility undergrounding. He indicated that staff recommends approval of the request.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the

City Council unanimously (5-0) <u>Granted</u> Exemption to the Requirement to Underground Utilities with Payment of In Lieu Fees for the Proposed Development at 16415 Monterey

Road.

28. REVENUE INCREASE REVIEW (Continued from 6/16/04)

City Treasurer Roorda indicated that this item has been before the Council at prior meetings. He said that in February, the Council adopted goals for the City budget for the upcoming fiscal year. He said that the strategic five year plan developed for the City identified that there is a strong potential for a shortage of revenue to meet the objectives of the Council over a five year period. He indicated that the Finance & Audit Committee has been looking at potential sources of revenue increases for the City and to come back to the Council with a plan on how it might deal or address this issue. He said that the first opportunity to present the findings of the Committee was at a Council meeting held on June 2 and that there was an opportunity for follow up discussion on June 16, 2004. At the June 16 meeting, there was interest expressed by the Council that the Committee provide some additional context around how the Council might consider various options about potential sources for revenue increases. In order to meet the request of the Council, the Finance & Audit Committee has returned with its original consideration

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and its originally ratings as well as a framework from which the Council might work together as a starting point. The Council can gather its own input, separate from the Committee. After the regular meeting of the Finance & Audit Committee where it set out to accomplish the Council's objective, new information came to light with regards to potential tax increases at the County level. He informed the Council that the Finance & Audit Committee held a special meeting last week to talk about and consider this potential source of revenue increase.

City Manager Tewes indicated that he learned from County staff that there had been a recent referral from a member of the Board that asked staff to consider certain revenue options. Among the option that County staff intends to bring back for Board consideration on August 3 is a proposal for a county-wide sales tax increase. He said that there are two variances to the proposal, both being for county-wide sales tax increases: 1) a ½% sales tax increase to be applied for general purposes to meet county needs; and 2) a ½% sales tax increase to be applied county wide with 1/3 of the proceeds of the tax to be allocated to incorporated cities within the County. He stated that County staff wanted to make it clear that this is an option that they are evaluating and would be presenting to the Board. There is no particular indication that the Board is supportive of the sales tax increase. He indicated that the law requires that if it is to be placed on the ballot, 2/3 of the Board members must approve it. He stated that County staff indicated that they were preparing the analysis at the suggestion that they identify options to bring back to the Board on August 3 as this is almost the last day in which a matter can be placed on the November 2004 ballot. It was the intention of County staff that if the tax measure made it to the November 2004 ballot, it would ensure that the tax could be implemented at the earliest time possible.

City Treasure Roorda indicated that the Finance & Audit Committee has come forward with a recommendation for Council consideration to make a recommendation back to the County in regards to whether or not to include the additional 1/4% sales tax that would result in potential revenue coming back to the City as part of the agreement with the County. He stated that there were a number of items that the Committee considered. He said that the countywide tax would not give any particular jurisdiction an economic advantage. One of the considerations of a city-wide sales increase as opposed to a countywide sales tax is that there might be potential negative impacts in terms of economic activity within the city. This would result in individuals buying less within the City limits because they have the opportunity to pay less tax elsewhere. By having a broader based sales tax; it would make it more challenging to select other areas where individuals might go for a lower sales tax. This option would not have as a direct impact on economic activity as may otherwise occur if it was a city only tax. Another consideration is that a tax at a city level could potentially increase or grow as the City grows whereas a tax at the county level would be depended upon an average across the County as a whole. He said that the potential growth of a revenue source, over time, may be faster than the other. He stated that the County is facing some difficult challenges and that this is one way to address the challenge; providing a benefit county-wide for county services that otherwise would not accrue. He said that there would be a lack of specificity in terms of how the County might spend the new revenue source as opposed to how the City might spend the revenue source. It was also felt that there might be additional momentum generated with more communities looking at benefiting from the tax increase to help preserve service levels and that this could potentially help in terms of an argument in support of the tax, possibly making it more acceptable to the voters. He stated that the taxes for a countywide proposal might result in revenues coming in sooner than would taxes from a City tax, supporting the objectives of the City of City of Morgan Hill Joint Special & Regular City Council, Special Redevelopment Agency, and Special Morgan Hill Finance Commission Meeting Minutes – July 7, 2004 Page - 29 –

trying to fill the gap that it currently has over the five year strategic objectives and plans. It is being recommended that the Council develop a recommendation to send back to the County with regards to the additional ½% sales tax, not necessarily taking a position on the County increase in particular. Should the County be going down this path, it should be within their objective to also include the benefits for the cities with the additional ½% sales tax.

Finance Director Dilles stated that the Finance & Audit Committee recommends that the Council take a position on the County proposal and direct the Council representative on the Santa Clara County Cities Association Board to present the Council's position to that Board. He informed the Council that it is his understanding that the Cities Association Board has this issue agendized for discussion tomorrow evening. Therefore, this would be an appropriate place to include the City's perspective on how this group could move ahead in discussions with the County.

City Treasurer Roorda felt that it was great to have another option for the City to consider and adds to the range of options the Council could consider.

City Manager Tewes indicated that the Cities Association has placed this matter on their upcoming agenda for consideration. He stated that Gillian Moran, Executive Director for the Cities Association, invited County staff to make a presentation so that the Cities Association would have the benefit of County staff's view. The County CEO responded that he felt that it was premature to make a presentation and that he was floating an idea, asking his professional colleagues for their thoughts on this proposal. He stated that the County CEO's intention is to present a recommendation at the County Board meeting on August 3. He shared with the County CEO that once this idea is out and he is asking for professional colleagues' thoughts; there would be a full public discussion about this opportunity by cities and the potential that councils might take a position. He indicated that the County CEO understood this but that he did not believe that it was appropriate given the nature of the referral from the County Board member for him to make a presentation to the Cities Association in advance of his recommendation to the County Board.

Mayor Pro Tempore Sellers noted that at the last Council meeting, the Council had a couple of suggestions, one from the Mayor that the City consider moving forward with a sales tax this fall. He did not believe that the Council should move forward with a sales tax this fall. He noted that there were several options that were more attractive. He felt that the Council is at a point where it should act with some diligence but that the Council does not need to act this fall. By acting this fall, he felt that the Council would be eliminating a few options. He did not believe that the atmosphere was such that the City was in a down turn. He did not believe that the Council needs to go to the community unless it absolutely has to. Further, he did not believe that the City was in a position where its resources have been diminished. He continues to believe that the 25% reserve is sufficient as a goal and that it is too high to go the community and state that the City needs additional revenue. He said that a 25% reserve was higher than most communities have in the region, noting that the City is above this level at this time and will be lowering to the 25% reserve level. Therefore, it would not make sense to go to the community for a revenue increase. It was his belief that the Council has time to consider several measures. He said that there is a unique opportunity with the county sales tax that the City should give consideration to. He stated that one of the biggest concerns he has with moving forward with a sales tax

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is that the City would end up with a higher sales tax level than the City's neighbors, noting that the City already has a significant lower level of sales tax income than a lot of the City's neighbors. He felt that an increase in sales tax would exacerbate this problem and make the City's economic development efforts that much more difficult. He felt that it might be worth considering participating or lending the Council's support to the notion of a ½% sales tax because all communities would be at the same tax rate. He noted that the County has needs that directly impacts this community (e.g., mental health services, etc.) if they are unable to provide services because of cutbacks. If the Council decides to participate in the County's sales tax effort, he would like to give consideration of the appropriate level of the City's reserve before the City begins to receive an additional revenue stream from the ½% sales tax. He did not believe that the Council needs to move forward with a fall ballot measure. He would like to have further considerations/options laid out before the Council moves forward with a measure.

Mayor Kennedy said that it is clear that the City has a structural deficit that will exhaust the City's reserves unless the Council takes action to correct it. He indicated that his proposal was that the City place a ½% sales tax for Morgan Hill on the November 2004 ballot. Having seen a proposal from the County executive that is a better alternative for many of the reasons stated in the staff report, he would favor supporting this and authorizing the Council's representative to the Cities Association to support the County's tax measure. He felt that the City needs a plan B in the event that the County does not move forward with the ½% sales tax measure. The City would not have a new revenue source and would continue to deplete its reserves. He noted that the next time that the City would be able to place a tax measure on the ballot is two years from now. He indicated that the City is focusing on cutting costs, noting that the City has made major cuts in expenditures and that the Council has also focused heavily on economic development activities. He did not believe that the Council has identified a way to close the structural deficit. He felt that the ½% county sales tax would allow the City to close the structural deficit. He recommended that the Council move forward with the support of the County's sales tax and do what it can to encourage the County Board of Supervisors to support moving forward with this action.

Council Member Tate appreciated the work that went into the format of the matrix by the Finance & Audit Committee and that the Council was able to work out its own opinions. He indicated that he rated the utility users' tax as one that should be considered. He felt that it was good to see that the County may be conducting a sales tax this fall. It was his opinion that no one would get anywhere this fall as there are still so many things up in the air such as the lash back from the State not having resolved its budget. He noted that the City does not know where it stands as a local jurisdiction being protected from the State at this time. Until these issues work themselves out, he did not believe that the Council can go to the voting public and state why it needs the money to fill the gap and how it will interact with the other issues at the County and State level. He felt that the public has to have the total picture of how government is taxing them. He did not believe that the City would receive the public's support on a sales tax. He agreed with Mayor Pro Tempore Sellers on the timing issue. He was pleased that the Council was prudent in its reserves as it gives the City some latitude. He would not object to suggesting that the County try the sales tax ballot measure as the City something can learn from the results of the County's ballot measure.

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Council Member Carr noted that the Council has considered this topic for a third or fourth time and that the Council has not received public comment on this issue. Based on the lack of public comment, he did not know if it would be a good time to place a measure on the November 2004 ballot. He did not know if citizens believe that the Council would make the right decisions without their comments. He noted that the Council put together a five year plan to bring the City into a structural position that would use the reserves, bringing them down. He felt that the Council needs to take action to solve the structural problem and bring the needed \$1.2 million revenue on a consistent basis. It was his belief that the Council has time to work on this issue. As the Council takes advantage of this time, it adds more pressure at the end, resulting in fewer options of going to the voters. He agreed that the Council needs to answer questions so that it can justify its decisions/actions. He felt that there were some things that the Council can do in off election years versus waiting two years. They may not be the best options and that they may not be the tax opportunities that would be appropriate for Morgan Hill. He recommended that the Council take another look at the options. He was pleased that Mayor Kennedy supported making a recommendation to the County. He stated that the Finance & Audit Committee was not willing to go far enough to state that the Council supports the ½% county-wide sales tax. Should the County place something on the ballot, it is recommending that the ½% sales tax be placed on the ballot to make sure that municipal entities receive a portion of it. He recommended that the City be ready to engage in discussions tomorrow night at the Cities Association meeting, actively support the sales tax. The City should also be supporting the ½% sales tax at the County Board level.

Council Member Chang indicated that she placed the County's ½% sales tax measure on the Cities Association agenda last week. She stated that she was disappointed that a County representative would not be in attendance and present the contemplated sales tax in detail. She indicated that she would do her best to represent the City's viewpoint at the Cities Association meeting tomorrow night. She stated that she could not support a city-initiated sales tax measure this fall because she did believe that the City was ready to do so. She did not know the details enough to fully support a county-wide tax measure. Should the County Board of Supervisors decide to move forward with a sales tax, she recommended that they do not forget cities. She felt that the City needs to be clear in its statement. She inquired whether the City of Morgan Hill was willing to support a county-wide sales tax.

Mayor Pro Tempore Sellers felt that there is a concurrence on the Council that should the County Board of Supervisors decides to move forward with a sales tax measure, that it be a ½% sales tax. He did not believe that the City should weigh in on whether it believes it is prudent to do so at this point.

Mayor Kennedy recommended that the City advocate to the County to proceed with the ½% sales tax on the November 2004 ballot.

Council Member Carr said that if the County was to place the ½% sales tax on the ballot, sharing 1/3 with the City and keeping 2/3 of it for themselves, he would be comfortable with the justification for the 1/3 that would be coming to Morgan Hill. He said that the budget process that the Council has used has been prudent, noting that the City has cut its budget significantly, and is about to cut significant city services. He felt that the Council could make justifications for needing the additional funds. He said that he could not make this justification for the County for their share of the dollars. He felt that the County needs to make this justification. What he has read in the paper and his experience of County services,

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there has been over \$300 million in cuts/layoffs. If the County has more room to make cuts and layoffs in their budget, it would surprise him why they are not proceeding with a measure to increase revenues or find a new source of revenue. He felt that this would be an easy question for the County to answer. He said that he understands why Mr. Kutras is not willing to send individuals to the Cities Association when he has not presented this information to his Board. It was his belief that the Council could be more pro active with its justification for its share of the dollars.

Mayor Kennedy said that if the Council was to recommend that the Council's representative to the Cities Association express that the City would support the County placing the ½% sales tax measure on the ballot, it would not be a strong endorsement if only half of the cities take the position of supporting the ½% sales tax. He inquired whether the Council should encourage other cities to come on board with the County's ½% sales tax measure.

Mayor Pro Tempore Sellers felt that other cities would weigh in on this issue at their own meetings. It has been his experience, in attending Cities Association meetings, that if a Council member shows up at the meeting and they do not have direct direction from their Council, they would not advocate a position. He stated that he was not comfortable in pushing the County to consider the ½% sales tax as it was his belief that the County has to do so on its own volition. He did not believe that the need was so acute that the City needs to push the County to place a sales tax measure on the ballot. However, the City needs to make sure that should the County decide to place a tax measure on the ballot, that the City's needs are met as well.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action:

On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) <u>Directed</u> that Council Member Chang, as the Council's representative to the Cities Association, to convey at tomorrow night's Cities Association meeting that if the County is to place a tax measure on the ballot this fall, that the City feels strongly that it is to be a $\frac{1}{3}$ % sales tax measure.

Council Member Carr noted that the there was not enough support on the Council to move forward with a city measure on the November 2004 ballot. He felt that it was imperative that the Council continue the discussions of asking questions so that the Council can start answering the questions about what is appropriate, appropriate timeframe, how to conduct public outreach, and continue on with this dialogue. He did not want to see the Council decide not to do anything in November and wait until next summer to start talking about November again.

29. <u>COMMUNITY INDOOR RECREATION CENTER BUDGET DIRECTION DURING CONSTRUCTION DOCUMENTS DESIGN PHASE</u>

Deputy Director of Public Works Struve presented the staff report. He indicated that the Council directed that staff proceed with the construction documents, indicating that staff is approximately 50% along this process. He said that staff anticipates completion of the construction documents in November followed by the preparation of bid documents and award of contract in March or April 2005. When staff

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started on the construction documents, staff hired Nova Partners to perform additional independent cost estimates for the City, working with staff and Noll & Tam to further confirm the budget. The process to refine the budget created evidence that there was a \$400,000 disparity in costs primarily attributed to soft cost. Although staff is anticipating higher management construction costs, the costs are consistent with what was experienced at the community and aquatics centers. In order to address the \$400,000 deficient, staff convened with the Indoor Recreation Center (IRC) Council subcommittee to look at additional value engineering items that may be taken to reduce the construction cost of the project. He noted that \$431,000 has already been reduced from the project through value engineering. He said that there is an average construction cost per square feet of \$295. He informed the Council that it was the consensus of the IRC subcommittee that there be no further value engineering because there would be a severe affect on the quality of the building and would impact cost recovery revenue generation. He said that Chuck Davis, senior member of Noll and Tam's design team, pushed away from the table, stating that looking at individual items would not be prudent. If the City has to reduce the cost of the building, he recommended that the City look at a major change in scope. The IRC subcommittee discussed the elimination of the gym or bidding the gym as an alternate. As staff analyzed the impact of the recommendation of the gym, it was realized that the cost recovery implications of either alternative would be great. He requested Council direction as to whether staff and the IRC subcommittee should work harder toward value engineering, indicating that this is not being recommended. As an alternative, staff and the IRC subcommittee is requesting that the Council consider additional funding to cover the \$400,000 project shortfall.

Mayor Kennedy indicated that staff identified \$4 million of flood control funding, some of which is needed to close the gap to build the library. He recommended that some of the flood control funds be earmarked for the IRC.

City Manager Tewes indicated that a couple of weeks ago, the IRC subcommittee presented a report to the Council about library financing and identified a series of recommended actions, that if adopted, could result in a library and redevelopment budget of \$18.2 million. He stated that not all of the \$18.2 million was going to the library as some of these funds would be going toward addressing downtown parking issues and the promenade. The subcommittee recommended that the library/redevelopment be established with a budget of \$18.2 million. He stated that there was some confidence that within this budget the Council could achieve a library and a lot of other objectives as well. He said that it would be possible to take some funds from the \$18.2 million and allocate approximately \$400,000 to the indoor recreation center project as well. With respect to the library, the Council was establishing an overall project budget and that it was not based on cost estimates. The Council had high confidence that the library cost would be approximately \$14.7 million. He said that some additional funds were identified to perform other good things as part of the library project if it was to be located in the downtown.

Mayor Kennedy recommended that the Council shift \$400,000 of the \$18.2 million to the IRC.

Mayor Pro Tempore Sellers stated that he and Council Member Chang have been serving on the IRC subcommittee. He said that the IRC subcommittee returned to the Council for additional resources not knowing where they might come from. The subcommittee and staff reviewed each line item with the goal of making value engineering cuts and looking at the soundness of the entire project. Reviewed were

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items that did not need to be done in order to reduce cuts (e.g., height of the roofs, and other details). He stated that the IRC project still ended up in a situation where it was \$400,000 short. He indicated that the IRC subcommittee could not justify additional cuts because it would cut into the soundness of the project. The IRC subcommittee did not believe that doing so would meet the community's need. It was pointed out that there would be a significant deficit in maintenance, a position that the City should not be in. He said that every time he gave thought about coming back to the Council requesting additional resources, he was concerned about what Council Member Tate would state. He said that the contingencies are larger than what were included in past projects. It is felt that the contingencies would be sufficient to meet the needs and that it was felt that there may be some roll over. There may be a possibility that the project would need the \$400,000 when it is completed. He felt that it was vital that the Council move forward this evening as construction costs go up daily. He noted that a funding source has been identified. If a funding source is not identified, the City would be looking at creating a project that would not meet the community needs, running the project in a deficit.

Council Member Tate said that it was the June 23 date that the Council was to have made a decision on the library. However, the decision was postponed until July 21. He said that the sequence might have worked had the Council acted on the Library issue. He did not understand how the Council could approve additional funding without knowing what the City will be doing with the library.

Mayor Pro Tempore Sellers felt that there was a \$3 million cushion to fund the library, noting that \$14 million is needed for the library and \$18 million in funding has been identified.

Mayor Kennedy noted that there is not a \$3 million cushion as the downtown requires additional parking and additional promenade. Even with these, he felt that there was some cushion in funds if the downtown location is chosen for the library.

Council Member Carr recommended that funding be considered after July 21 following a decision on the library. He stated that he had a concern when the City entered into the construction documents on the IRC project. This was also a concern to him when the Council majority decided to postpone the library decision as other things hinged on that decision. He felt that Mayor Kennedy may have identified a funding source but felt that the Council should take a look at the big picture before spending money that it may not have.

Mr. Struve indicated that staff and the architect would appreciate a decision on funding sometime in July. He informed the Council that the architect is well on schedule but that they need a decision this month.

There was no one in attendance to address the Council.

Action: Mayor Pro Tempore Sellers made a motion, seconded by Council Member Chang, to utilize \$395,000 from the funding source identified by the City Manager and put this funding toward the indoor recreation center.

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Council Member Carr stated that he could not support the motion not because he does not support the project or finding the additional \$400,000. He said that he wanted to make the commitment of completing the library. He noted that there were some suggestions made earlier this evening that the library needs to be delayed. He indicated that the library is a higher priority on his list at this time.

Council Member Tate concurred with Council Member Carr's comments.

Mayor Kennedy stated that he would support the motion as he does not look at the action as taking away from the library. It was his belief that there were funds available to proceed with the library.

Vote: The motion carried 3-2 with Council Members Carr and Tate voting no.

Council Member Chang indicated that it was always her believe that this should not be IRC against the library. If the Council delays the IRC, it will be even more expensive, especially if the decision on the library waits until November.

30. RESPONSE TO GRAND JURY FINAL REPORT – INQUIRY INTO THE BOARD STRUCTURE AND FINANCIAL MANAGEMENT OF THE VALLEY TRANSPORTATION AUTHORITY (VTA)

City Manager Tewes presented the staff report, indicating that staff would frame the Council's discussion as a response to the Grand Jury.

Mayor Kennedy stated that he currently serves as the alternate Board Member to the VTA and having served two terms as a board member, he agreed with the County Grand Jury. Because of the fact that there is such a high turnover of board members of such a large body, it is an assignment that one should spend a lot of time on. He felt that it has become a staff driven organization out of default, except for the City of San Jose who has five members serving on the VTA board. He said that the City of San Jose and two members from Santa Clara County are the ones who essentially run the VTA. He stated that he would support all of the Grand Jury's recommendations as outlined. He did not know if this would go anywhere because you have the City of San Jose who has a vested interest that will fight the recommendation. He stated that he agreed with the recommended size of the board. He noted that the third recommendation relates to Bart where the Grand Jury is suggesting that Bart be slowed down.

City Manager Tewes said that the Grand Jury had a third finding and recommendation relating to the implementation of the transportation improvements. They suggested that VTA adopt a program of work that could be accomplished, expressing concern about the Bart project. He indicated that staff did not present the third finding/recommendation because the Civil Grand Jury specifically indicated that they were not seeking the City's input on this item.

Council Member Tate stated that the Grand Jury report made a lot of sense to him and that they made a strong case.

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Mayor Pro Tempore Sellers noted that the City of Morgan Hill has a 1/3 vote on the VTA and that this is a huge undertaking for any Council member to go through as the City is asked to represent the Cities of Gilroy and Milpitas as well.

Council Member Carr felt that the Grand Jury findings made a lot of sense. He stated the he is always concerned about adding more beaurocracy and another level of government. However, he did not know what else would be the answer to this item. He stated that would support the Mayor's position on this item.

There was no one in attendance to address the Council.

<u>Action:</u> On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Authorized** Mayor Kennedy to Submit a letter to the

Grand Jury supporting their recommendations 1 and 2.

31. REVIEW OF VALLEY TRANSPORTATION AUTHORITY (VTA) VALLEY TRANSPORTATION PLAN (VTP) 2030 PROJECT LIST

Mayor Kennedy indicated that Deputy Director of Public Works Bjarke serves on the Technical Advisory Committee of the VTA Board and that he had direct input on a lot of the issues in the VTP 2030. He was comfortable that the City has its projects included in the list. He noted that there is one project missing, the widening of Highway 101 from Cochrane Road south to Gilroy. He felt hat the Council needs to make a statement that this project needs to be added to the list. He did not believe that it was likely that it would be included in the list as it is late in the program. However, he felt that the Council needs to make the statement that this project needs to be placed on the list as expeditiously as possible.

Deputy Director of Public Works Bjarke said that staff could encourage VTA to consider the extension of Butterfield Boulevard to Hale Avenue as it looks at these projects. He said that the widening of Highway 101 to Gilroy is a \$164 million project and that it is carried on the list but is located well below VTA's funding limit of \$446 million. He indicated that the entire list of projects is \$1.9 billion. Therefore, the widening of Highway 101 is quite a way below the recommended funding line. He indicated that the Tennant Avenue overpass widening is contained in the Highway categories and is above the funding limit.

Mayor Kennedy felt that the City needs to start the process and hire an engineer/consultant to help the City work on the project study report and the environmental study reports in order to move the projects up the list.

Council Member Tate inquired whether the widening of Highway 101 to Gilroy could be done in increments.

Mayor Kennedy indicated that the City needs the cooperation and support of Gilroy because there is one vote shared between Morgan Hill, Milpitas and Gilroy.

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Mayor Pro Tempore Sellers said that a problem exists where Highway 101 narrows down to two lanes at the south end of Gilroy. He felt that there would be back up traffic in town based on traffic impacts.

Mayor Kennedy indicated that one of the suggestions is that Highway 101 be widened from Cochrane to Leavesly. He said that it would get expensive once you start to widen the overpasses. He said that it is not nearly as costly to widen Highway 101 from Cochrane to Leavesly.

Mr. Bjarke said that VTA likes to look at projects regional in nature and connecting communities. It was his belief that widening Highway 101 to Gilroy is the right thing to do.

Mayor Kennedy recommended that the Council move forward with a request to add the additional identified projects to the VTP 2030 list.

There was no one in attendance to address the Council.

Action: On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) <u>Directed</u> that staff forward a request to add the additional identified projects to the VTP 2030 list.

32. EMERGENCY AUTHORIZATION FOR WELL DRILLING – Resolution No. 5830

Director of Public Works Ashcraft presented the staff report.

There was no one in attendance to address the Council.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Adopted Resolution No. 5830, Declaring the Need for

this Emergency Expenditure.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the

City Council unanimously (5-0) <u>Appropriated</u> \$350,000 from the Current Year

Unappropriated Water Fund (653) Balance for this Project.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the

City Council unanimously (5-0) Approved Expenditure of Funds, Not to Exceed

\$550,000, for Construction of Emergency Well.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Discussion of a library location ballot measure for the Council's July 21, 2004 meeting (Mayor Kennedy).

ADJOURNMENT

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There being no further business, Mayor/Chairman/President Kennedy adjourned the meeting at 11:00 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK, AGENCY/COMMISSION SECRETARY



CITY COUNCIL STAFF REPORT MEETING DATE: July 28, 2004

ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER

RECOMMENDED ACTION(S):

- 1. Open/close Public Hearing
- 2. Approve Mitigated Negative Declaration
- 3. Waive the First and Second Reading of Ordinance
- 4. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting approval to modify the list of permitted uses for an approximate 9.4-acre area in the Morgan Hill Ranch Business Park to allow for medical/dental and general office uses.

Prepared By:	
Associate Planner	
Approved By:	
Planning Manager	
Submitted By:	
City Manager	-

Agenda Item # 10

Approximately half of the site is currently developed with light industrial buildings. The remaining portion of the site is proposed for development of a 39,140-sf medical/dental office building and a 21,878-sf office building.

At the July 13 Commission meeting, the Commission requested Staff to address the following: 1) cumulative impact of the loss of industrial land, 2) air quality monitoring inside the buildings, and 3) traffic mitigation. Base assumptions of the traffic analysis were also re-evaluated at the applicant's request to determine if modifications to the mitigation measures would result.

This item was originally scheduled to be reviewed by the Planning Commission on July 13. However, at the applicant's request, the item was continued to July 27. This item was also continued from the July 21 Council meeting to July 28. Consequently, this report was prepared prior to Commission action on the application. Staff will provide a verbal report at the Council meeting, summarizing the discussion and outcome of the July 27 Commission meeting.

For the Council's reference, a copy of the July 13 and July 27 Commission reports are attached. Should the Council decide to approve the zoning amendment request, an approval ordinance is also attached. It should be noted that revisions to both the approval ordinance and mitigated Negative Declaration may be required based on the outcome of the Commission meeting. In that event, a revised ordinance and mitigated Negative Declaration will be distributed the night of the Council meeting.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing these applications.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ALLOW GENERAL OFFICE USES AND UP TO 40,000 SQUARE FEET OF MEDICAL/DENTAL OFFICE USES WITHIN DIGITAL ISLAND OF THE MORGAN HILL RANCH BUSINESS PARK (APNs 726-25-080 thru -082) (ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- **SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- **SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- **SECTION 4.** The City Council finds that the proposed amendments to the Planned Unit Development District are consistent with the criteria specified in Chapter 18.30 of the Morgan Hill Municipal Code.
- SECTION 5. The City Council hereby approves a precise development plan as contained in that certain series of documents date stamped July 9, 2004, on file in the Community Development Department, entitled "Venture Professional Center" prepared by Ware Malcomb. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6. The Council hereby approves an amendment to the list of allowable uses within Lots 1, 2 and 3 of Digital Island, as shown on the attached zoning plat (Exhibit A), to include those uses identified in the attached Exhibit B.
- SECTION 7. Approval of this zoning amendment request shall not become effective until such time that the applicant (Morgan Hill Development Partners) cures all defaults of any subdivision improvement agreement; development agreement, including but not limited to payment of assessments, penalties and interest; and/or any other agreements between the applicant and the City of Morgan Hill.

City of Morgan Hill Ordinance No. , New Series Page 2

- **SECTION 8.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- **SECTION 9.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the special meeting of the City Council of the City of Morgan Hill held on the 28th Day of July 2004, and was finally adopted at a regular meeting of said Council on the 18th Day of August 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

ABSTAIN: COUNCIL MEMBERS: ABSENT: COUNCIL MEMBERS: ATTEST: APPROVED:	Irma Torrez	z, City Clerk	Dennis Kennedy, Mayor	
	ATTEST:		APPROVED:	
AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS:	NOES: ABSTAIN:	COUNCIL MEMBERS: COUNCIL MEMBERS:		

EXECUTE: SERVICE OF THE CITY CLERK OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No., New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th Day of August 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:	
	IRMA TORREZ, City Clerk

EXHIBIT B

ALLOWED USES FOR DIGITAL ISLAND VENTURE PROFESSIONAL CENTER

PERMITTED USES

Lots 1, 2 and 3:

- 1. All uses permitted in the ML, Light Industrial Zoning District as in effect on January 30, 1980, or as amended to consider other allowable uses; Private Recreation uses for Park employees.
- 2. 'Medical, dental, research, experimental, film or testing laboratories' shall include only those facilities where analysis testing is completed and no patient contact is involved.
- 3. All permitted uses allowed in the CO, Administrative Office District as in effect on July 28, 2004, with the following exceptions:
 - a. 'Educational services' shall be a conditional use (see below).
 - b. 'Health services, exclusive of hospitals' shall be prohibited except as specifically allowed by this ordinance.
 - c. 'Social services, except residential care' shall also exclude day care services.
- 4. All Group I and Group E Occupancies are strictly prohibited.

Building 1 on Lot 3 Only (up to a maximum of 40,000 sf):

- 1. Professional offices, which shall be defined as follows: An office from which and at which a doctor, lawyer, engineer, architect, accountant or similar professional persons may offer services.
- 2. A maximum of five patients undergoing minor medical procedures that require general anesthesia or that may render a patient incapable of unassisted self-preservation shall occupy the building at any given time.
- 3. MRI (Magnetic Resonance Imaging) facility

<u>CONDITIONAL USES</u> - The following uses shall require review and approval by the Morgan Hill Planning Commission

Lots 1, 2 and 3:

- 1. All uses conditionally permitted in the ML, Light Industrial Zoning District as in effect on January 30, 1980, or as amended to consider other allowable uses.
- 2. Educational services



CITY COUNCIL STAFF REPORT MEETING DATE: JULY 28, 2004

Agenda	Item #	11

Prepared and Submitted By:

City Manager

STATUS OF THE RE-ESTABLISHMENT OF MEDICAL SERVICES

RECOMMENDED ACTION(S):

Receive a presentation by DePaul Health Center regarding re-establishing medical services at the former Saint Louise Hospital campus.

EXECUTIVE SUMMARY:

Council has requested that DePaul Health Center provide them with periodic updates on their efforts to re-establish medical services in Morgan Hill.

FISCAL IMPACT:

No budget adjustment required at this time.



CITY COUNCIL STAFF REPORT MEETING DATE: JULY 28, 2004

Agenda Item # 1		
Prepared and		
Submitted By:		
City Manager		
Only manager		

RECOMMENDED ACTION(S):

Adopt the attached Medical Services Policy and Objectives.

MEDICAL SERVICES POLICY AND OBJECTIVES

EXECUTIVE SUMMARY:

At their annual goal setting workshop, Council adopted the following goal:

By May 2004, the City Council will review suggestions from the Medical Services Subcommittee on a possible revision to the City's Medical Services Objectives.

In May, the Council Subcommittee presented a preliminary draft of the proposed revisions. The Subcommittee was asked to clarify the discussion of "urgent care" and to prepare a separate guide to show how the original Policy and Objectives had been modified.

The Subcommittee, composed of Mayor Kennedy and Mayor Pro Tem Sellers, recommends the attached statement of "Medical Services Policy and Objectives" that incorporate the following:

- A statement of policy;
- Short and long term objectives to be achieved; and
- Definition of the City Government's role in medical services.

FISCAL IMPACT:

No budget adjustment required at this time.

City of Morgan Hill

Medical Services Policy and Objectives

In order to guide the City of Morgan Hill's support of medical services for the community, the City Council adopts the following:

- A statement of policy;
- A series of short and long term outcomes or objectives to be achieved; and
- A description of the role of the City government.

Medical Services Policy

It is the policy of the City of Morgan Hill to encourage medical services providers to locate and expand in the city in order to deliver affordable, convenient, and needed medical services to the broadest possible segment of the Morgan Hill community.

Objectives

The following objectives set forth the expected outcomes to be achieved by pursuing the Medical Services Policy in the short term (over the next two years or so) and the long term (requiring more than two years to accomplish).

Short Term Objectives:

- 1. Additional primary care physicians and specialists sufficient to meet the needs of Morgan Hill residents, and to enhance the success of other medical services including an acute care hospital.
- 2. One or more conveniently located and accessible "urgent care" facilities open normal business hours and on evenings and weekends.
- 3. Additional obstetrical/gynecology services, a birthing center, and other associated medical services for women.
- 4. Ancillary medical services and facilities that would meet community needs and re-invigorate the community of medical services providers in Morgan Hill.

Examples include:

- Laboratory, radiology, and clinical services.
- An ambulatory surgery center.
- One or more skilled nursing facilities.
- Additional physical therapy and rehabilitation services.

Long Term Objectives:

1. A full service, general acute care hospital with a 24-hour emergency room.

The hospital can be provided at an existing facility or at a conveniently located new facility.

2. Ancillary medical services and facilities that would support the success of a general acute care hospital (for example, a specialty surgery hospital).

City Government's Role

Morgan Hill will be responsible for adopting land use and regulatory policies that facilitate the Medical Services Policy and Objectives.

Morgan Hill has helped establish and initially finance the work of the Morgan Hill Community Health Foundation which is expected to take the lead in community health services planning and implementation. Physician recruitment remains the City's top priority for expenditure of the public funds previously allocated to the Foundation.

Morgan Hill will expect the Foundation to annually adopt a work plan and report progress to the community at least quarterly.

The City will support and facilitate the formation of a special district or establishment of a new public funding source for medical services, as long as it does not jeopardize general municipal services.

Adopted	
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City of Morgan Hill

Crosswalk from Recommended 2004 Medical Services Policy and Objectives to Adopted 2000 Policy Objectives

NEW DOCUMENT	COMMENTS
In order to guide the City of Morgan Hill's support of medical services for the community, the City Council adopts the following:	This new document includes 3 major sections, while the previous document only included "objectives."
 A statement of policy; A series of short and long term outcomes or objectives to be achieved; and A description of the role of the City government. 	
Medical Services Policy It is the policy of the City of Morgan Hill to encourage medical services providers to locate and expand in the city in order to deliver affordable, convenient, and needed medical services to the broadest possible segment of the Morgan Hill community.	This document proposes an overall statement of policy that was not part of the previous document.
Objectives The following objectives set forth the expected outcomes to be achieved by pursuing the Medical Services Policy in the short term (over the next two years or so) and the long term (requiring more than two years to accomplish).	This new document proposes short term and long term objectives. The previous document included "primary" and "secondary" objectives without regard to timing.
Short Term Objectives: 1. Additional primary care physicians and specialists sufficient to meet the needs of Morgan Hill residents, and to enhance the success of other medical services including an acute care hospital.	This objective restates the fifth bullet point of the previous document.

Short	Term Objectives:	
BHOT	Term objectives.	
2.	One or more conveniently located and accessible "urgent care" facilities open normal business hours and on evenings and weekends.	This objective singles out "urgent care" as distinct from the second bullet of the previous document.
Short	Term Objectives:	
3.	Additional obstetrical/gynecology services, a birthing center, and other associated medical services for women.	This objective restates the third bullet point of the previous document.
Short	Term Objectives:	
4.	Ancillary medical services and facilities that would meet community needs and re-invigorate the community of medical services providers in Morgan Hill. Examples include: Laboratory, radiology, and clinical services.	This objective combines some of the "primary" and "secondary" objectives of the previous document.
	 An ambulatory surgery center. One or more skilled nursing facilities. Additional physical therapy and rehabilitation services. 	
Long Term Objectives:		
1.	A full service, general acute care hospital with a 24-hour emergency room.	This objective combines the first and last bullets of the "primary" objectives from the previous document.
	The hospital can be provided at an existing facility or at a conveniently located new facility.	

Long Term Objectives:	
2. Ancillary medical services and facilities that would support the success of a general acute care hospital (for example, a specialty surgery hospital).	This objective combines several objectives from the previous document in order to seek services that would support a hospital.
City Government's Role	This is a new section.
Morgan Hill will be responsible for adopting land use and regulatory policies that facilitate the Medical Services Policy and Objectives.	
Morgan Hill has helped establish and initially finance the work of the Morgan Hill Community Health Foundation which is expected to take the lead in community health services planning and implementation. Physician recruitment remains the City's top priority for expenditure of the public funds previously allocated to the Foundation.	
Morgan Hill will expect the Foundation to annually adopt a work plan and report progress to the community at least quarterly.	
The City will support and facilitate the formation of a special district or establishment of a new public funding source for medical services, as long as it does not jeopardize general municipal services.	

Adopted	
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POLICY OBJECTIVES FOR MEDICAL SERVICES IN MORGAN HILL

Primary Objectives:

- \$ An acute care hospital facility, *but if unable to immediately achieve this objective*, then the objective is to preserve flexibility for either the conversion of an existing facility to an acute care hospital or construction of a new facility.
- \$ Emergency care, but if unable to immediately achieve this objective, then 24 hour urgent care.
- \$ Obstetrics/gynecology services, a birthing center, and other associated services for women.
- \$ An ambulatory surgery center.
- \$ A sufficient complement of primary care physicians to support the community and/or to support an acute care facility.
- \$ A sufficient amount of appropriate lab, radiology, and other clinical services to support the community and/or to support an acute care facility.
- \$ Minimal financial risk to the City and taxpayers.
- \$ Mechanisms to guarantee/secure the provision of the above components of an operational health care system over a period, not less than 20 years.
- \$ Provide services that serve the broadest segment of the Morgan Hill Community as possible.
- \$ The above objectives may be achieved in an existing facility, a new facility, or in a variety of facilities located throughout Morgan Hill.

Secondary Objectives:

- \$ Skilled nursing facility
- \$ Speciality surgery services
- \$ Physical Therapy/Rehabilitation



CITY COUNCIL STAFF REPORT MEETING DATE: July 28, 2004

WATER SUPPLY SHORTAGE OPERATIONS PLAN

RECOMMENDED ACTION(S): Review and approve attached draft plan and direct staff to return to Council with the required resolution making emergency findings to implement the plan to protect public health and safety when water shortages occur.

EXECUTIVE SUMMARY: The City currently has a short term problem with supplying adequate amounts of water during peak summer demand. The primary factor causing this problem is the well-publicized perchlorate

Agenda Item # 13
Prepared By:
Program Administrator
Approved By:
Public Works Director
Submitted By:
City Manager

contamination which has forced the City to shut down three of its water wells, one with perchlorate levels over the Action Level, two with periodic readings at or near the Action Level. Together, these wells account for over 12% of the total supply capacity. Even with one of these wells, Dunne 2, turned on, the City will still have a difficult time meeting peak demand because of the failure of last year's well exploration to develop a new well and difficulties in securing an additional site to drill a new well.

State of California Water Code Section 350-359 authorizes local water purveyors to declare water shortage emergencies whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply to the extent that there would be insufficient water for human consumption, sanitation and fire protection. A public hearing with seven days notice is required for the emergency declaration except under immediate emergency conditions.

Staff has prepared the attached draft Water Supply Shortage Operations Plan that establishes a three-stage protocol for the City to follow during water supply shortages. While it does focus on steps the City Government can take to reduce its own use of water and on voluntary actions from the business community, it also requires that the City will turn off the irrigation meters at the largest water users in the community, including City parks, during times of water supply emergencies. As noted in the attached excerpts from our 2001 Urban Water Management Plan, irrigation demand during the peak summer months account for 50% of water use and can be reduced without impact to health and safety. The public will continue to be notified about our water supply condition both on Channel 17 and our City website.

The City is actively improving water supplies by constructing a new water well, adding storage capacity with a new reservoir, incorporating perchlorate removal systems on one or more of the wells, and cutting back on watering at parks throughout the City. In addition, staff is ramping up water conservation efforts and anticipates reducing water demand per capita by next summer.

Staff recommends that the Council approve the attached draft Water Supply Shortage Operations Plan and direct staff to return to Council with the required resolution to protect the public health and safety when water shortages occur.

FISCAL IMPACT: No budget adjustment is requested at this time.

DRAFT Water Supply Shortage Action Plan - Summer 2004

	Supply Status	City Actions	Utility Customer Actions	Public Education
Stage 1	Urgent - Water demand has exceeded optimal water supply	- Reduce Parks Irrigation by 50% - Turn Dunne 2 Well On		- "Urgent" Message on Web Site and Channel 17
Stage 2	Critical - Water demand continues to exceed water supply and Stage 1 actions have not adequately reduced water demand	 Parks Irrigation Remains at 50% Turn Main 1 Well On Using Generator Power Turn Off Sprayground at Aquatics Center 	- Water Heroes Asked to Cut Irrigation to 50%	- "Critical" Message on Web Site and Channel 17
Stage 3	Emergency - Water demand continues to exceed water supply and Stage 1 and Stage 2 measures have not adequately reduced water demand	- Eliminate Parks Irrigation - Turn Off Sprayground at Aquatics Center	- City Institutes Mandatory Measures and Turns Off Irrigation Meters at Largest Water Users	- "Emergency" Message on Channel 17 Plays Exclusively



REDEVELOPMENT AGENCY

MEETING DATE: July 28, 2004

ROYAL COURT HOUSING PROJECT

RECOMMENDED ACTION(S): Provide direction on the revised design concepts for the Royal Court Housing Project.

Agenda Item #	14
Approved By:	

BAHS Director

Submitted By:

Executive Director

EXECUTIVE SUMMARY: In December 2002, the Redevelopment

Agency (Agency) approved the concept of developing a mixed ownership/rental housing project with a commercial component at the current location of the Royal Court Apartments on Monterey Road (formerly, the Royal Motel). In May 2003, the Agency approved a \$3.75 million loan to South County Housing (SCH) to purchase the four parcels comprising the site. At that same May meeting, the Agency directed SCH to increase the project's density and to attempt to acquire adjoining property to allow for a better planned development. In April 2004, the Agency held a workshop to discuss two key issues: 1) the revised site plan consisting of sixteen 3-bedroom ownership townhouses along Del Monte Avenue and approximately 5,000 square feet of commercial along Monterey Road, plus a denser core of 46 apartments in the interior portion of the site, and 2) the impacts on the project of saving the Royal Motel as required by the historical survey. The Agency's direction to staff was to develop a new site plan and design which incorporates the Royal Motel into the project, and then report back to the Agency.

Attached are the revised site plans and elevations for the project. SCH will also provide an alternative site plan at the meeting based on comments received from a meeting with a Planning Commission Subcommittee (Subcommittee). In the interest of time, the Planning Commission (PC) appointed a subcommittee to provide input on the revised plan. In general, the Subcommittee was supportive of the project and indicated that they are willing to work with staff and the developer to address the variances (e.g., parking) that may be required for the project as proposed.

We are seeking Council approval of the following proposed project changes to the initial site plan.

- Moving the two Royal Motel buildings to the northeast corner of the site and incorporating the units into the project as studio apartments. SCH will save 6 of the 10 units which is an acceptable mitigation measure. As a result of saving the Royal Motel, the commercial portion of the project will be eliminated. SCH is proposing to build 52 affordable rental units which are higher than the initial 46 units proposed.
- Reducing the number of townhomes from 16 to 12 units. The reason for the change is twofold: 1) the unit size will be increased to make the affordable units more marketable. SCH had concerns that the initial unit size was too small and would not be competitive against similar market rate units and 2) three units will be sold as market rate units to provide for a mixed income project and to help subsidize the affordable units.
- The design of the townhomes has been modified to reflect a craftsmen style. The design of the units along Monterey reflects a bungalow design, which is more compatible with the Royal Motel. The design of the apartments in the center of the site remained unchanged, but SCH will explore revising the design to make it more compatible with other components of the project.
- The project will, most likely require several variances to the existing zoning in order to maintain the project densities. While we do not know the extent of the variances, staff will work closely with the PC to address these issues, recognizing that some variances may not be avoidable.



CITY COUNCIL STAFF REPORT MEETING DATE: July 28, 2004

STATUS OF TRANSPORTATION IMPACT ANALYSIS FOR THE DOWNTOWN PLAN

RECOMMENDED ACTION(S):

Direct staff to schedule a workshop in September to review the results of the traffic study for the Downtown. Plan.

Agenda Item # 15	_
Prepared By:	
Planning Manager	
Submitted By:	
City Manager	

EXECUTIVE SUMMARY:

The Planning Division Work Plan for the current fiscal year includes completion of the environment impact analysis and adoption of the General Plan Amendment and Zoning Amendments required to implement the Downtown Plan. A portion of the environmental assessment includes a Transportation Impact Analysis (Traffic Study) to investigate the feasibility of reducing Monterey Road to one lane in each direction through the immediate downtown area. A reduction in the number of travel lanes was identified in the Downtown Plan as a possible traffic calming measure. The Downtown Association and Chamber of Commerce support the lane reductions, not only to slow down traffic, but to create a more pedestrian oriented environment in the Downtown. Should the lane reductions not be feasible, the Traffic Study will evaluate and propose other traffic calming measures that could be implemented.

The traffic study portion of the environmental review will be completed within the next four weeks. The preliminary findings in the draft report indicate that Monterey Road could be reduced to a single lane in each direction at the present time. The traffic consultant is currently evaluating future build-out scenarios in the traffic model to determine whether the lane reduction could remain permanent. Upon completion of the traffic study, staff will be requesting direction from the City Council on whether to proceed with implementation of the Downtown Plan with the Monterey Road lane closures, or to consider other traffic calming measures.

It is recommended that the City Council schedule a workshop in September to review the results of the Traffic Study for the Downtown Plan.

FISCAL IMPACT:

No budget adjustment required.



CITY COUNCIL STAFF REPORT MEETING DATE: July 28, 2004

URBAN LIMIT LINE STUDY: CITY COUNCIL PARTICIPATION IN STUDY PROCESS

RECOMMENDED ACTION: Accept the Recommendation of the Urban Limit Line Advisory Committee for City Council Participation in the Urban Limit Line Study Process

EXECUTIVE SUMMARY: On April 7, 2004, the City Council modified the Urban Limit Line Study to incorporate work elements to study implementation issues. As part of that agenda item, the Council considered alternative ways for the Council to participate in the Urban Limit Line Advisory Committee's

process. Alternatives included three status reports, a workshop plus two status reports or two Council study sessions. The Council requested the Advisory Committee to provide a recommended form of Council involvement.

On July 12, 2004, the Urban Limit Line Study Advisory Committee reviewed the scheduled work of the Sub-committee that is addressing issues related to the Southeast Quadrant as well as the anticipated work of the Advisory Committee. Attached is a list of meetings with key work topics. Completion of the agenda topics in bold type face are the issues that the Advisory Committee concluded are most appropriate for subsequent City Council review and discussion.

The Advisory Committee recommends that City Council review of a Status Report on the Urban Limit Line Study be held in early September and a workshop be held in late November or early December. The timing of the workshop is such that the Committee's public meeting for review of Study issues would occur in January. Completion of the Committee's work would occur in February 2005. The Committee's recommendations would then be reviewed by the City Council prior to beginning the environmental review process.

FISCAL IMPACT: Funding for the Urban Limit Line Study has been approved by the City Council. The recommended status report and workshop will not impact the Study's budget.

Attachment: Advisory Committee Recommendation Re: City Council Participation in Study Process

MORGAN HILL URBAN LIMIT LINE STUDY

ADVISORY COMMITTEE RECOMMENDATION RE: CITY COUNCIL PARTICIPATION IN THE STUDY PROCESS

Following is a listing of the upcoming meetings of the full Committee and Sub-committee. The agenda topics shown in bold typeface are of sufficient importance to warrant reporting to the City Council before proceeding further with the Committee's efforts. A City Council Status Report would be scheduled for early September and a City Council workshop scheduled for late November/early December.

Advisory Committee and Sub-committee Meetings

Sub-committee Meeting 3 (July 29, 10:00 to 2:00):

Purpose: discuss the conclusions of the preliminary analysis and their relationship to future planning and funding issues and funding techniques.

- 1. Review Meeting 1 and 2 highlights
- 2. The conclusions of the preliminary greenbelt feasibility analysis;

Advisory Committee Meeting # 18---August 23, 2004

- 1. Confirm final expectations for hillside greenbelt areas
- 2. City and County land use issues
- 3. Land costs

Sub-committee Meeting 4 (August 26, 10:00 to 2:00):

Purpose: address questions and requests for information that result from the first three sub-committee meetings:

- 1. Review Meeting 1, 2 and 3 highlights;
- 2. Follow up discussion of greenbelt feasibility assessment issues;
- 3. Follow up discussion of planning techniques, funding techniques and potential trigger mechanisms; and
- 4. Have the subcommittee start identifying conclusions and possible recommendations.

City Council Status Report---early September

Sub-committee Meeting 5 (mid to late September 5:00 to 9:00):

Purpose: develop Sub-committee conclusions and recommendations

- 1. Review Meeting 1, 2, 3 and 4 highlights;
- 2. Identify conclusions;
- 3. Identify recommendations; and
- 4. Identify how the recommendations generally translate into General Plan Policies/Actions (specific Plan amendment wording will be developed later in the Advisory Committee process)

Advisory Committee Meeting # 19---September 13, 2004

- 1. Follow up from Meeting # 18
- 2. Land acquisition mechanisms
- 3. Funding sources
 - a. Land acquisition
 - b. Land management
 - c. Administration
 - d. Match for outside funds

Advisory Committee Meeting # 20---October 11, 2004

- 1. Follow up from Meetings # 18 and 19
- 2. Framework/factors for acquisition priorities
- 3. Procedures/staffing/implementation administration costs

Sub-committee Meeting 6, if necessary (week of October 11):

Purpose: have the subcommittee finalize and take action on their recommendations to the Advisory Committee.

Advisory Committee Meeting # 21---November 8, 2004

- 1. Address the sub-committee recommendations for the southeast quadrant
- 2. Acquisition priorities
- 3. Initial discussion of Committee recommendations

City Council Workshop---late November/early December

Public Meeting---January

Advisory Committee Meeting # 22---February 14, 2005

- 1. Follow up from previous meetings
- 2. Discuss potential impacts and consequences
- 3. Review City and County General Plan amendments
- 4. Make recommendations and other final Committee recommendations
- 5. Review overall list of principles
- 6. Discuss/identify environmental issues



CITY COUNCIL STAFF REPORT MEETING DATE: JULY 28, 2004

Agenda Item # 17

Prepared By:

Council Services & Records Manager

Submitted By:

City Manager

APPOINTMENT TO THE CITY'S NOVEMBER 2006 CENTENNIAL PLANNING STEERING COMMITTEE

RECOMMENDED ACTION(S):

- 1) Confirm appointments to the City's November 2006 Centennial Steering Committee:
- 2) Appointment a two-member Council subcommittee to assist said committee; and
- 3) Provide direction to the Steering Committee

EXECUTIVE SUMMARY:

At the Council's June 23, 2004 meeting, the Council agreed to establish a November 2006 Centennial Celebration Steering Committee. The Council agreed to a seven-member steering committee and that each council member would appoint one individual, with the Mayor appointing three individuals to the steering committee. At the time of preparation of this staff report, the Council was still trying to identify its recommended appointments. Staff recommends that appointments be identified at the Council's July 28 meeting.

The Council may wish to consider appointing a two-member Council subcommittee and a staff liaison to assist the Centennial Planning Steering Committee. Further, that the Council instructs the steering committee to develop a plan for organizing the City's centennial celebration, reporting back to the Council with its timeline and plans.

FISCAL IMPACT: No fiscal impacts at this time.